IMPORTANCE OF MARKET TESTS FOR COMPETITION

Proper sequencing, including markets tests for competition, is required for two major reasons: (1) the local and regional telecommunications monopolies have both the incentive and the ability to block the transformation to competitive markets and (2) it is difficult, if not practically impossible, for regulators to prevent abuses by hybrid entities operating simultaneously in monopolistic and competitive markets. The kind of abuses that could restrict competition include raising rivals' costs by delaying access to monopolized lines, requiring costly forms of interconnections, discriminatory pricing, and degrading technology; requiring the purchase of unneeded services; and arrangements (like the lack of portability of telephone numbers, and the prevention of the sharing and resale of long distance services within the calling area) that make it difficult for competitors to enter and compete in monopolistic markets. A careful examination of deregulation proposals from the RBOCs suggests that these companies have come to accept such practices as the only way to do business.

A test to determine if a market is competitive would prevent the continuation of these anti-competitive practices and therefore would facilitate the transition to competitive markets. And with regulatory constraints on the monopolistic local exchange carriers, private investments needed to maintain an efficient, open, flexible, responsive and innovative information infrastructure would be encouraged. The minimum essential preconditions of a market test for competition include: removing restrictive state laws; making it possible for consumers to have effective options for long distance and local telephone service; implementing number portability; unbundling network services in order to allow consumers to select only those components they need, as well as to permit providers to compete for these services; establishing real cost-based pricing arrangements, including the imputation of all charges to the local monopoly telephone exchanges that are already being paid by competitive carriers; preventing restrictions on resale and sharing; establishing uniform technical and interconnect standards; providing equal access to conduits and rights of way; permitting separate interconnections for each unbundled network service; granting alternative providers co-carrier status; and explicitly identifying and fairly implementing a system to allocate universal service costs.

Conditions like these are necessary to ensure the transition to adequate competition, but additional tests must be applied to determine when markets have become adequately competitive. In general, adequate competition exists when consumers have numerous choices, when no firm has enough market power to effectively raise prices without eliciting supply or price responses from actual and potential rivals, and when there are no artificial barriers to entry. However, precise measures would clarify and give greater precision to this definition, creating clear goals for RBOCs and regulators, as well as clear signals for potential investors. Examples of the kinds of measures that might be used to determine when local markets are adequately competitive for the purpose of removing the line-of-business restrictions are the following, proposed by AT&T in response to Senators John Danforth and Daniel Inouye:

1. All legal, regulatory and technical barriers must have been eliminated.

2. Seventy-five percent of the customers served by RBOCs can get telephone service from two or more alternative additional providers.

3. At least 30 percent of customers obtain exchange access service exclusively from an alternate provider.

While there is room for debate on the precise measures used to determine when local markets have become competitive, there is little doubt about the desirability of having such measures.

CONCLUSION

Proper sequencing—authorizing competitive entry, followed by a market test to determine whether effective local competition has developed—would require a willingness to change and compromise by all parties concerned, but the transformation to competition would have enormous benefits for the RBOCs, long distance companies, business and residential consumers, regulators, and, most important, the American public. With these safeguards the NII would establish an advanced, unified information infrastructure, unified by competitive market forces rather than "natural monopoly." This competitive information infrastructure within the framework of fair, transparent, simplified and flexible rules to prevent abuses and encourage innovations and efficiency would have enormous economic, social and political benefits. It is hard to think of anything more important for our nation's future.

Ms. MOLINARI. Mr. Speaker, today's question facing the House is: How can we improve our economic, social, and international footing, without spending taxpayers money, and without hurting any particular industry? I believe the answer is H.R. 3626.

H.R. 3626 is a bill that makes sense, common sense and dollar cents. The common sense in H.R. 3626 points to advances in technology that will improve education, health care, transportation, business, and the environment. The dollar cents reveals 3.6 million new jobs with private industries, not taxpayers, taking the cost while also fostering a competitive edge in markets abroad.

For once, in a long time, industries can agree that H.R. 3626 has benefits for everyone. The multimedia market will have the ability to expand to its fullest potential. This cannot happen until multiple users across the country can interact with each other. Information providers need and welcome the partnerships, new capital, technology, and mass market capabilities that would result from competition. In fact, one hundred of the "Fortune 500" companies have endorsed the bill because they recognize that lower telecommunication costs will increase their own competitiveness.

I support the simple answer that America has been waiting for, H.R. 3626.

Mr. FRANKS of Connecticut. Mr. Speaker, I rise today in support for H.R. 3636 and H.R. 3626, legislation reported out of the Energy and Commerce Committee, on which I serve, and which will lead our Nation's telecommunications industry into the 21st century.

These bills will promote competition and bring new goods and services to consumers by removing the court-imposed restrictions on the Bell operating companies, by opening up the local telephone system to competition and by permitting our telephone companies to offer cable television services.

H.R. 3636 and H.R. 3626 will help our country's economy and will greatly assist in creating jobs for Americans. A study by the independent econometric forecasting firm, the WEFA Group, demonstrated that full competition in the telecommunications industry, including Bell Company relief from restrictions that currently bar them from certain markets and including full competition at the local level, would create 3.6 million new jobs in the United States over the next 10 years in a wide variety of industries and in every State in the Union. In my home State of Connecticut, over 45,000 new jobs over the next 10 years would be created in a fully competitive marketplace.

These measures have a wide range of support from a variety of organizations including senior citizens groups, education associations, labor unions, minority interests, and small business coalitions. These bills reflect years of work by the House Telecommunications Subcommittee and contain compromises to ensure that all competitors are treated fairly and equally.

I urge my colleagues to support both H.R 3636 and H.R. 3626.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 3626, as amended.

The question was taken.

Mr. PETRI. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

The Chair announces that this vote will be taken after the next suspension.

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan.

There was no objection.

NATIONAL COMMUNICATIONS COMPETITION AND INFORMATION INFRASTRUCTURE ACT OF 1994

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3636) to promote a national communications infrastructure to encourage deployment of advanced communications services through competition, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3636

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Communications Competition and Information Infrastructure Act of 1994".

(b) TABLE OF CONTENTS.—

TITLE I—TELECOMMUNICATIONS INFRASTRUCTURE AND COMPETITION

SEC. 101. POLICY; DEFINITIONS.

(a) POLICY.—Section 1 of the Communications Act of 1934 (47 U.S.C. 151) is amended—

(1) by inserting "(a)" after "SECTION 1."; and

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

"(b) The purposes described in subsection (a), as they relate to common carrier services, include—

"(1) to preserve and enhance universal telecommunications service at just and reasonable rates;

"(2) to encourage the continued development and deployment of advanced and reliable capabilities and services in telecommunications networks;

"(3) to make available, so far as possible, to all the people of the United States, regardless of location or disability, a switched, broadband telecommunications network capable of enabling users to originate and receive affordable high quality voice, data, graphics, and video telecommunications services;

"(4) to ensure that the costs of such networks and services are allocated equitably among users and are constrained by competition whenever possible;

"(5) to ensure a seamless and open nationwide telecommunications network through joint planning, coordination, and service arrangements between and among carriers; and

"(6) to ensure that common carriers' networks function at a high standard of quality in delivering advances in network capabilities and services.".

(b) DEFINITIONS.—Section 3 of such Act (47 U.S.C. 153) is amended—

(1) in subsection (r)—

(A) by inserting "(A)" after "means"; and

(B) by inserting before the period at the end the following: "', or (B) service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service within a State but which does not result in the subscriber incurring a telephone toll charge"; and

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

"(gg) 'Information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

"(hh) 'Equal access' means to afford, to any person seeking to provide an information service or a telecommunications service, reasonable and nondiscriminatory access on an unbundled basis—

"(1) to databases, signaling systems, poles, ducts, conduits, and rights-of-way owned or controlled by a local exchange carrier, or other facilities, functions, or information (including subscriber numbers) integral to the efficient transmission, routing, or other provision of telephone exchange services or telephone exchange access services;

"(2) that is at least equal in type, quality, and price to the access which the carrier affords to itself or to any other person; and

"(3) that is sufficient to ensure the full interoperability of the equipment and facilities of the carrier and of the person seeking such access.

"(ii) 'Open platform service' means a switched, end-to-end digital telecommunications service that is subject to title II of this Act, and that (1) provides subscribers with sufficient network capability to access multimedia information services, (2) is widely available throughout a State, (3) is provided based on industry standards, and (4) is available to all subscribers on a single line basis upon reasonable request.

"(jj) 'Local exchange carrier' means any person that is engaged in the provision of telephone exchange service or telephone exchange access service. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

"(kk) 'Telephone exchange access service' means the offering of telephone exchange services or facilities for the purpose of the origination or termination of interexchange telecommunications services to or from an exchange area.

"(ll) 'Telecommunications' means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(mm) 'Telecommunications service' means the offering, on a common carrier basis, of telecommunications facilities, or of telecommunications by means of such facilities. Such term does not include an information service.".

SEC. 102. EQUAL ACCESS AND NETWORK FUNCTIONALITY AND QUALITY.

(a) AMENDMENT.—Section 201 of the Communications Act of 1934 (47 U.S.C. 201) is amended by adding at the end thereof the following new subsections:

"(c) EQUAL ACCESS.—

"(1) OPENNESS AND ACCESSIBILITY OBLIGATIONS.—

"(A) COMMON CARRIER OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to interconnect with the facilities and equipment of other providers of telecommunications services and information services in accordance with such regulations as the Commission may prescribe as necessary or desirable in the public interest with respect to the openness and accessibility of common carrier networks.

"(B) ADDITIONAL OBLIGATIONS OF LOCAL EXCHANGE CARRIERS.—The duty under subsection (a) of a local exchange carrier includes the duty—

"(i) to provide, in accordance with the regulations prescribed under paragraph (2), equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person providing telecommunications services or information services reasonably requesting such equal access and interconnection, so that such networks are fully interoperable with such telecommunications services and information services; and

"(ii) to offer unbundled features, functions, and capabilities whenever technically feasible and economically reasonable, in accordance with requirements prescribed by the Commission pursuant to this subsection and other laws.

"(2) EQUAL ACCESS AND INTERCONNECTION REGULATIONS.—

"(A) REGULATIONS REQUIRED.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations that require reasonable and nondiscriminatory equal access to and interconnection with the facilities of a local exchange carrier's network at any technically feasible and economically reasonable point within the carrier's network on reasonable terms and conditions, to any other carrier or person offering telecommunications services requesting such access. The Commission shall establish such regulations after consultation with the Joint Board established pursuant to subparagraph (D). Such regulations shall provide for actual collocation of equipment necessary for interconnection for telecommunications services at the premises of a local exchange carrier, except that the regulations shall provide for virtual collocation where the local exchange carrier demonstrates that actual collocation is not practical for technical reasons or because of space limitations.

"(B) COMPENSATION.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations requiring just and reasonable compensation to the exchange carrier providing such equal access and interconnection pursuant to subparagraph (A). Such regulations shall include regulations to require the carrier, to the extent it provides a telecommunications service or an information service, to impute such access and interconnection charges to itself as the Commission determines are reasonable and nondiscriminatory.

"(C) EXEMPTIONS AND MODIFICATIONS.—Notwithstanding paragraph (1) or subparagraph (A) of this paragraph, a rural telephone company shall not be required to provide equal access and interconnection to another local exchange carrier. The Commission shall not apply the requirements of this paragraph or impose requirements pursuant to paragraph

(1)(B)(ii) to any rural telephone company, except to the extent that the Commission determines that compliance with such requirements would not be unduly economically burdensome, unfairly competitive, technologically infeasible, or otherwise not in the public interest. The Commission may modify the requirements of this paragraph for any other local exchange carrier that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines that compliance with such requirements (without such modifications) would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest. The Commission may include, in the regulations prescribed pursuant to paragraph (1)(B), modified requirements for any feature, function, or capability that the Commission determines is generally available to competing providers of telecommunications services or information services at the same or better price, terms, and conditions.

"(E) JOINT BOARD ON EQUAL ACCESS AND INTERCONNECTION STANDARDS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of preparing a recommended decision for the Commission with respect to the equal access and interconnection regulations required by this paragraph.

"(F) ENFORCEMENT OF PRESCRIBED REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this subsection in fulfilling the requirements of this subsection, to the extent that such regulations are consistent with the provisions of this subsection.

"(F) DEFINITION OF RURAL TELEPHONE COMPANY.—For the purpose of subparagraph (C) of this paragraph, the term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity—

"(i) provides common carrier service to any local exchange carrier 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 recent 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;

"(ii) provides telephone exchange service, including telephone exchange access service, to fewer than 50,000 access lines; or

"(iii) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines.

"(G) PREEMPTION.—

"(A) LIMITATION.—Notwithstanding section 2(b), no State or local government may, after one year after the date of enactment of this subsection—

"(i) effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service, or impose any restriction or condition on entry into the business of providing any such service;

"(ii) prohibit any carrier or other person providing interstate or intrastate telecommunications services or information services from exercising the access and interconnection rights provided under this subsection; or

"(iii) impose any limitation on the exercise of such rights.

"(B) PRESCRIBED TERMS AND CONDITIONS.—Subparagraph (A) shall not be construed to prohibit a State from imposing a term or condition on providers of telecommunications services or information services if such term or condition does not effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service and is necessary and appropriate to—

"(i) protect public safety and welfare;

"(ii) ensure the continued quality of intrastate telecommunications;

"(iii) ensure that rates for intrastate telecommunications services are just and reasonable; or

"(iv) ensure that the provider's business practices are consistent with consumer protection laws and regulations.

"(C) NORMAL CONSTRUCTION PERMITS PERMITTED.—Subparagraph (A) shall not be construed to prohibit a local government from requiring a person or carrier to obtain ordinary and usual construction or similar permits for its operations if (i) such permit is required without regard to the nature of the business, and (ii) requiring such permit does not effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service.

"(D) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(3) shall apply in lieu of the provisions of this paragraph.

"(E) PARITY OF FRANCHISE AND OTHER CHARGES.—Notwithstanding section 2(b), no local government may, after 1 year after the date of enactment of this subsection, impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any provider of telecommunications services that distinguishes between or among providers of telecommunications services, including the local exchange carrier. For purposes of this subsection, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among providers of telecommunications services, or any tax.

"(4) TARIFFS.—

"(A) GENERALLY.—Within 18 months after the date of enactment of this subsection, a local exchange carrier shall prepare and file tariffs in accordance with this Act with respect to the services or elements offered to comply with the equal access and interconnection regulations required under this subsection. The costs that a carrier incurs in providing such services or elements shall be borne solely by the users of the features and functions comprising such services or elements or of the feature or function that uses or includes such services or elements. The Commission shall review such tariffs to ensure that—

"(i) the charges for such services or elements are cost-based; and

"(ii) the terms and conditions contained in such tariffs unbundle any separable services, elements, features, or functions in accordance with paragraph (1)(B)(ii) and any regulations thereunder.

"(B) SUPPORTING INFORMATION.—A local exchange carrier shall submit supporting information with its tariffs for equal access and interconnection that is sufficient to enable the Commission and the public to determine the relationship between the proposed charges and the costs of providing such services or elements. The submission of such information shall be pursuant to regulations adopted by the Commission to ensure that similarly situated carriers provide such information in a uniform fashion.

"(5) PRICING FLEXIBILITY.—

"(A) ESTABLISHMENT OF CRITERIA.—Within 270 days after the date of enactment of this subsection, the Commission, by regulation, shall establish criteria for determining—

"(i) whether a telecommunications service or provider of such service has become, or is substantially certain to become, subject to competition, either within a geographic area or within a class or category of service;

"(ii) whether such competition will effectively prevent rates for such service that are unjust or unreasonable or that are unjustly or unreasonably discriminatory; and

"(iii) appropriate flexible pricing procedures that can be used in lieu of the filing of tariff schedules, or in lieu of other pricing procedures established by the Commission, and that are consistent with the protection of subscribers and the public interest, convenience, and necessity.

"(B) DETERMINATIONS.—The Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall, upon application—

"(i) render determinations in accordance with the criteria established under clauses (i) and (ii) of subparagraph (A) concerning the services or providers that are the subject of such application; and

"(ii) upon a proper showing, establish appropriate flexible pricing procedures consistent with the criteria established under clause (iii) of such subparagraph.

The Commission shall approve or reject any such application within 120 days after the date of its submission.

"(C) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(1) shall apply in lieu of the provisions of this paragraph.

"(6) JOINT BOARD TO PRESERVE UNIVERSAL SERVICE.—

"(A) ESTABLISHMENT; FUNCTIONS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of recommending actions to the Commission and State commissions for the preservation of universal service. As a part of preparing such recommendations, the Joint Board shall survey providers and users of telephone exchange service and consult with State commissions in order to determine the pecuniary difference between the cost of providing universal service and the prices determined to be appropriate for such service.

"(B) PRINCIPLES.—The Joint Board shall base policies for the preservation of universal service on the following principles:

"(i) A plan adopted by the Commission and the States should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

"(ii) Such plan should define the nature and extent of the services encompassed within carriers' universal service obligations. Such plan should seek to promote access to advanced telecommunications services and capabilities, including open platform service, for all Americans by including access to advanced telecommunications services and capabilities in the definition of universal service while maintaining just and reasonable rates. Such plan should seek to promote reasonably comparable services for the general public in urban and rural areas.

"(iii) Such plan should establish specific and predictable mechanisms to provide adequate and sustainable support for universal service.

"(iv) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to preservation of universal service.

"(v) Such plan should permit residential subscribers to continue to receive only basic

voice-grade local telephone service, for a period of not more than 5 years, equivalent to the service generally available to residential subscribers on the date of enactment of this subsection, at just, reasonable, and affordable rates. Determinations concerning the affordability of rates for such services shall take into account the rates generally available to residential subscribers on such date of enactment and the pricing rules established by the States. If the plan would result in any increases in the rates for such services for residential subscribers that are not attributable to changes in consumer prices generally, such plan should include a requirement that a rate increase shall be permitted in any proceeding commenced after March 16, 1994, only upon a showing that such increase is necessary to prevent competitive disadvantages for one or more service providers and is in the public interest. Such plan should provide that any such increase in rates shall be minimized to the greatest extent practical and shall be implemented over a time period of not less than 5 years after the date of enactment of this subsection.

"(vi) To the extent that a common carrier establishes advanced telecommunications services, such plan should include provisions to promote public access to advanced telecommunications services, other than a video platform, at a preferential rate that will recover only the added costs of providing such service, for public service institutions, both as producers and users of services, as soon as technically feasible and economically reasonable. Such plan shall provide that such preferential rates should only be made available to such institutions for the purpose of providing noncommercial information services or telecommunications services to the general public and not for the internal telecommunications needs or commercial use of such institutions.

"(vii) Such plan should determine and establish mechanisms to ensure that rates charged by a provider of interexchange telecommunications services for services in rural areas are maintained at levels no higher than those charged by the same carrier to subscribers in urban areas.

"(viii) Such plan should, notwithstanding any other provision of law, require common carriers serving more than 1,800,000 access lines in the aggregate nationwide, to be subject to alternative or price regulation, and not cost-based rate-of-return regulation, for services that are subject to the jurisdiction of the Commission or the States, as applicable, when such carrier's network has been made open to competition as a result of its implementation of the equal access, interconnection, and accessibility provisions of this subsection.

"(ix) Such other principles as the Board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of this Act.

"(C) DEFINITION OF UNIVERSAL SERVICE; ACCESS TO ADVANCED SERVICES.—In defining the nature and extent of the services encompassed within carriers' universal service obligations under subparagraph (B)(ii), the Joint Board shall consider the extent to which—

"(i) a telecommunications service has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

"(ii) denial of access to such service to any individual would unfairly deny that individual educational and economic opportunities; and

"(iii) such service has been deployed in the public switched telecommunications network; and

"(iv) inclusion of such service within carriers' universal service obligations is otherwise consistent with the public interest, convenience, and necessity.

The Joint Board may, from time to time, recommend to the Commission modifications in the definition proposed under subparagraph (B).

"(D) REPORT; COMMISSION RESPONSE.—The Joint Board convened pursuant to subparagraph (A) shall report its recommendations within 270 days after the date of enactment of this subsection. The Commission shall complete any proceeding to act upon such recommendations within one year after such date of enactment. A State may adopt regulations to implement the Joint Board's recommendations, except that such regulations shall not, after 18 months after such date of enactment, be inconsistent with regulations prescribed by the Commission to implement such recommendations.

"(E) DEFINITION OF PUBLIC SERVICE INSTITUTION.—For the purposes of this paragraph, the term 'public service institution' means—

"(i) an agency or instrumentality of Federal, State, or local government;

"(ii) a nonprofit educational institution, health care institution, public library, public museum, or public broadcasting station or entity;

"(iii) a charitable organizations that (I) is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986; (II) provides public services in conjunction with an agency, instrumentality, institution, or entity described in clause (i) or (ii); and (III) provides information that is useful to the public and that is related to the work of such an agency, instrumentality, institution, or entity.

"(7) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

"(A) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing telecommunications services, information services, or video programming services by the common carrier or affiliate; and

"(B) ensure such competing telecommunications services, information services or video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing telecommunications services, information services, or video programming services.

"(8) RESALE.—The resale or sharing of telephone exchange service (or unbundled services, elements, features, or functions of telephone exchange service) in conjunction with the furnishing of a telecommunications service or an information service shall not be prohibited nor subject to unreasonable conditions by the carrier, the Commission, or any State.

"(9) TELECOMMUNICATIONS NUMBER PORTABILITY.—The Commission shall prescribe regulations to ensure that—

"(A) telecommunications number portability shall be available, upon request, as soon as technically feasible and economically reasonable; and

"(B) an impartial entity shall administer telecommunications numbering and make such numbers available on an equitable basis.

The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. For the purpose of this paragraph, the term 'telecommunications number portability' means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one provider of telecommunications services to another.

"(10) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every three years, the Commission shall—

"(A) conduct a proceeding in which interested parties shall have an opportunity to comment on whether the standards and requirements established by or under this subsection have opened the networks of carriers to reasonable and nondiscriminatory access by providers of telecommunications services and information services;

"(B) review the definition of, and the adequacy of support for, universal service, and evaluate the extent to which universal service has been protected and access to advanced services has been facilitated pursuant to this subsection and the plans and regulations thereunder; and

"(C) submit to the Congress a report containing a statement of the Commission's findings pursuant to such proceeding, and including an identification of any defects or delays observed in attaining the objectives of this subsection and a plan for correcting such defects and delays.

"(11) STUDY OF RURAL PHONE SERVICE.—Within 1 year after the date of enactment of this subsection, the Commission shall initiate an inquiry to examine the effects of competition in the provision of telephone exchange access service and telephone exchange service on the availability and rates for telephone exchange access service and telephone exchange service furnished by rural exchange carriers.

"(d) NETWORK FUNCTIONALITY AND QUALITY.—

"(1) FUNCTIONALITY AND RELIABILITY OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to furnish that service in accordance with such regulations of functionality and reliability as the Commission may prescribe as necessary or desirable in the public interest pursuant to this subsection.

"(2) COORDINATED PLANNING FOR INTEROPERABILITY AND OTHER PURPOSES.—The Commission shall establish—

"(A) procedures for the conduct of coordinated network planning by common carriers and other providers of telecommunications services or information services, subject to Commission supervision, for the effective and efficient interconnection and interoperability of public and private networks; and

"(B) procedures for Commission oversight of the development by appropriate standards-setting organizations of—

"(i) standards for the interconnection and interoperability of such networks;

"(ii) standards that promote access to network capabilities and services by individuals with disabilities; and

"(iii) standards that promote access to information services by subscribers to telephone exchange service furnished by a rural telephone company (as such term is defined in subsection (c)(2)(F)).

"(3) OPEN PLATFORM SERVICE.—

"(A) STUDY.—Within 90 days after the date of enactment of this subsection, the Commission shall initiate an inquiry to consider the regulations and policies necessary to make open platform service available to subscribers at reasonable rates based on the reasonably identifiable costs of providing such service, utilizing existing facilities or new facilities with improved capability or efficiency. The inquiry required under this para-

graph shall be completed within 180 days after the date of its initiation.

"(B) REGULATIONS.—On the basis of the results of the inquiry required under subparagraph (A), the Commission shall prescribe and make effective such regulations as are necessary to implement the inquiry's conclusions. Such regulations may require a local exchange carrier to file, in the appropriate jurisdiction, tariffs for the origination and termination of open platform service as soon as such service is economically and technically feasible. In establishing any such regulations, the Commission shall take into account the proximate and long-term deployment plans of local exchange carriers.

"(C) TEMPORARY WAIVER.—The Commission shall also establish a procedure to waive temporarily specific provisions of the regulations prescribed under this paragraph if a local exchange carrier demonstrates that compliance with such requirement—

"(i) would be economically or technically infeasible; or

"(ii) would materially delay the deployment of new facilities with improved capabilities or efficiencies that will be used to meet the requirements of open platform services.

Such petitions shall be decided by the Commission within 180 days after the date of its submission.

"(D) COST ALLOCATION.—Any such regulations shall provide for the allocation of all costs of facilities jointly used to provide open platform service and telephone exchange service or telephone exchange access services.

"(E) STATE AUTHORITY.—Nothing in this paragraph shall be construed to limit a State's authority to continue to regulate any services subject to State jurisdiction under this Act.

"(F) COMMISSION INQUIRY.—Within 2 years after the date of enactment of this paragraph, the Commission shall conduct an inquiry concerning the deployment of open platform service and other advanced telecommunications network capabilities, including switched, broadband telecommunications facilities. In conducting such inquiry, the Commission shall seek to develop information concerning—

"(i) the availability of such network capabilities to all Americans;

"(ii) the availability of such network capabilities to different regions, States, and classes of subscribers;

"(iii) the availability of advanced network technology needed to deploy such network capabilities; and

"(iv) likely deployment schedules for such network capabilities by region, State, and classes of subscribers.

The Commission shall submit a report to the Congress on the results of such inquiry within 270 days after the commencement of such inquiry, and annually thereafter for the succeeding 5 years.

"(4) ACCESSIBILITY REGULATIONS.—

"(A) REGULATIONS.—Within 1 year after the date of enactment of this section, the Commission shall prescribe such regulations as are necessary to ensure that advances in network services deployed by local exchange carriers shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, unless the cost of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations shall seek to permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access. Throughout the process of developing such regulations, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

"(B) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in subparagraph (A), the local exchange carrier that deploys the network service shall ensure that the network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

"(C) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the activity necessary to comply with the requirements of this paragraph would result in an undue burden, the factors to be considered include the following:

"(i) The nature and cost of the activity.

"(ii) The impact on the operation of the facility involved in the deployment of the network service.

"(iii) The financial resources of the local exchange carrier.

"(iv) The type of operations of the local exchange carrier.

"(D) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of this paragraph would result in adverse competitive impact, the following factors shall be considered:

"(i) Whether such activity would raise the cost of the network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the network service profitable.

"(ii) Whether such activity would, with respect to the network service in question, put the local exchange carrier at a competitive disadvantage. This factor may be considered so long as competing network service providers are not held to the same obligation with respect to access by persons with disabilities.

"(E) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every 3 years, the Commission shall conduct a proceeding in which interested parties shall have an opportunity to comment on whether the regulations established under this paragraph have ensured that advances in network services by providers of telecommunications services and information services are accessible and usable by individuals with disabilities.

"(F) EFFECTIVE DATE.—The regulations required by this paragraph shall become effective 18 months after the date of enactment of this subsection.

"(5) QUALITY RULES.—

"(A) MEASURES OR BENCHMARKS REQUIRED.—The Commission shall designate or otherwise establish network reliability and quality performance measures or benchmarks for common carriers for the purpose of ensuring the continued maintenance and evolution of common carrier facilities and service. Not later than 180 days after the date of enactment of this subsection, the Commission shall initiate a rulemaking proceeding to establish such performance measures or benchmarks.

"(B) CONTENTS OF REGULATIONS.—Such regulations shall include—

"(i) quantitative network reliability and service quality performance measures or benchmarks;

"(ii) procedures to monitor and evaluate common carrier efforts to increase network reliability and service quality; and

"(iii) procedures to resolve network reliability and service quality complaints.

"(C) COORDINATION AND CONSULTATION.—Throughout the process of developing network reliability and service quality performance measures or benchmarks, as required by subparagraphs (A) and (B), the Commission shall coordinate and consult with service and equipment providers and users and State regulatory bodies to ensure their concerns and interests are given full consideration in such process.

"(6) RURAL EXEMPTION.—The Commission may modify, or grant exemptions from, the requirements of this subsection in the case of a common carrier providing telecommunications services in a rural area.

"(e) INFRASTRUCTURE SHARING.—

"(1) REGULATIONS REQUIRED.—Within one year after the date of enactment of this subsection, the Commission shall prescribe regulations that require local exchange carriers to make available to qualifying carriers such public switched telecommunications network technology and information and telecommunications facilities and functions as may be requested by such a qualifying carrier for the purpose of enabling that carrier to provide telecommunications services, or to provide access to information services, in the geographic area in which that carrier has requested and obtained designation as the qualifying carrier.

"(2) QUALIFYING CARRIERS.—For purposes of paragraph (1), the term 'qualifying carrier' means a local exchange carrier that—

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

"(B) is a common carrier which offers telephone exchange service, telephone exchange access service, and any other service that is within the definition of universal service, to all customers without preference throughout one or more exchange areas in existence on the date of enactment of this subsection.

"(3) TERMS AND CONDITIONS OF REGULATIONS.—The regulations prescribed by the Commission pursuant to this subsection—

"(A) shall not require any local exchange carrier to take any action that is economically unreasonable or that is contrary to the public interest or to provide telecommunications facilities and functions to any qualifying carrier that is not reasonably proximate to such local exchange carrier;

"(B) shall permit, but shall not require, the joint ownership or operation of public switched telecommunications network facilities, functions, and services by or among the local exchange carrier and the qualifying carrier;

"(C) shall ensure that a local exchange carrier shall not be treated by the Commission or any State commission as a common carrier for hire, or as offering common carrier services, with respect to any technology, information, facilities, or functions made available to a qualifying carrier pursuant to this subsection;

"(D) shall ensure that local exchange carriers make such technology, information, facilities, or functions available to qualifying carriers on fair and reasonable terms and conditions that permit such qualifying carriers to fully benefit from the economies of scale and scope of the providing local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in such regulations;

"(E) shall establish conditions that promote cooperation between local exchange carriers and qualifying carriers; and

"(F) shall not require any local exchange carrier to engage in any infrastructure sharing agreement for any geographic area where such carrier is required to provide services subject to State regulation.

"(4) INFORMATION CONCERNING DEPLOYMENT OF NEW SERVICES AND EQUIPMENT.—Any local exchange carrier that has entered into an agreement with a qualifying carrier under this subsection shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including software integral to such telecommunications services and equipment, including upgrades.".

(b) PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATIONS SERVICES.—

(1) TELECOMMUNICATIONS SERVICES.—Section 621(b) of the Communications Act of 1934 (47 U.S.C. 541(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) To the extent that a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

"(i) such cable operator or affiliate shall not be required to obtain a franchise under this title; and

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

"(B) A franchising authority may not impose any requirement that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

"(C) A franchising authority may not order a cable operator or affiliate thereof—

"(i) to discontinue the provision of a telecommunications service, or

"(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

"(D) 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 or a franchise renewal.".

(2) FRANCHISE FEES.—Section 622(b) of the Communications Act of 1934 (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 thereof.

(c) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 (47 U.S.C.152(b)) is amended by inserting "201(c) and (d)," after "Except as provided in sections".

SEC. 103. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 229. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

"(a) PROMOTION OF DELIVERY OF ADVANCED SERVICES.—In fulfillment of its obligation under section 1 to make available to all the people of the United States a rapid, efficient, nationwide, and worldwide communications service, the Commission shall promote the provision of advanced telecommunications services by wire, wireless, cable, and satellite technologies to—

"(1) educational institutions;

"(2) health care institutions; and

"(3) public libraries.

"(b) ANNUAL SURVEY REQUIRED.—The National Telecommunications and Information Administration shall conduct a nationwide survey of the availability of advanced telecommunications services to educational institutions, health care institutions, and public libraries. The Administration shall complete the survey and release publicly the results of such survey not later than one year after the date of enactment of this section. The results of such survey shall include—

"(1) the number of educational institutions and classrooms, health care institutions, and public libraries;

"(2) the number of educational institutions and classrooms, health care institutions, and public libraries that have access to advanced telecommunications services; and

"(3) the nature of the telecommunications facilities through which such educational institutions, health care institutions, and public libraries obtain access to advanced telecommunications services.

The National Telecommunications and Information Administration shall update annually the survey required by this section. The survey required under this subsection shall be prepared in consultation with the Department of Education, Department of Health and Human Services, and such other Federal, State, and local departments, agencies, and authorities that may maintain or have access to information concerning the availability of advanced telecommunications services to educational institutions, health care institutions, and libraries.

"(c) RULEMAKING REQUIRED.—Within one year after the date of enactment of this section, the Commission shall issue a notice of proposed rulemaking for the purpose of adopting regulations that—

"(1) enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications services to all educational institutions and classrooms, health care institutions, and public libraries by the year 2000;

"(2) ensure that appropriate functional requirements or performance standards, or both, including interoperability standards, are established for telecommunications systems or facilities that interconnect educational institutions, health care institutions, and public libraries with the public switched telecommunications network;

"(3) define the circumstances under which a carrier may be required to interconnect its telecommunications network with educational institutions, health care institutions, and public libraries;

"(4) provide for either the establishment of preferential rates for telecommunications services, including advanced services, that are provided to educational institutions, health care institutions, and public libraries, or the use of alternative mechanisms to enhance the availability of advanced services to these institutions; and

"(5) address such other related matters as the Commission may determine.

"(d) FEASIBILITY STUDY.—The Commission shall assess the feasibility of including postsecondary educational institutions in any regulations promulgated under this section.

"(e) DEFINITIONS.—For purposes of this section—

"(1) the term 'educational institutions' means elementary and secondary educational institutions; and

"(2) the term 'health care institutions' means not-for-profit health care institutions, including hospitals and clinics.".

SEC. 104. DISCRIMINATORY INTERCONNECTION.

Section 208 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsection:

"(c) EXPEDITED REVIEW OF CERTAIN COMPLAINTS.—The Commission shall issue a final order with respect to any complaint arising from alleged violations of the regulations and orders prescribed pursuant to section 201(c) within 180 days after the date such complaint is filed.".

SEC. 105. EXPEDITED LICENSING OF NEW TECHNOLOGIES AND SERVICES.

Section 7 of the Communications Act of 1934 (47 U.S.C. 157) is amended by adding at the end thereof the following new subsection:

"(c) LICENSING OF NEW TECHNOLOGIES.—

"(1) EXPEDITED RULEMAKING.—Within 24 months after making a determination under subsection (b) that a technology or service related to the furnishing of telecommunications services is in the public interest, the Commission shall, with respect to any such service requiring a license or other authorization from the Commission, adopt and make effective regulations for—

"(A) the provision of such technology or service; and

"(B) the filing of applications for the licenses or authorizations necessary to offer such technology or service to the public, and shall act on any such application within 24 months after it is filed.

"(2) REVIEW OF APPLICATIONS.—Any application filed by a carrier under this subsection for the construction or extension of a line shall also be subject to section 214 and to any necessary approval by the appropriate State commissions.".

SEC. 106. NEW OR EXTENDED LINES.

Section 214 of the Communications Act of 1934 is amended by adding at the end the following new subsection:

"(e) Any application filed under this section for authority to construct or extend a line shall address the means by which such construction or extension will meet the network access needs of individuals with disabilities.".

SEC. 107. POLE ATTACHMENTS.

Section 224 of the Communications Act of 1934 (47 U.S.C. 244) is amended—

(1) in subsection (a)(4), by inserting after "system" the following: "or a provider of telecommunications service";

(2) in subsection (c)(2)(B), by striking "cable television services" and inserting "the services offered via such attachments";

(3) by redesignating subsection (d)(2) as subsection (d)(4); and

(4) by striking subsection (d)(1) and inserting the following:

"(d)(1) For purposes of subsection (b) of this section, the Commission shall, no later than 1 year after the date of enactment of the National Communications Competition and Information Infrastructure Act of 1994, prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services (as defined in section 3(mm) of this Act). Such regulations shall—

"(A) recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit to all attachments to 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,

"(B) recognize that the usable space is of proportional benefit to all entities attached to the pole, duct, conduit, or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity, and

"(C) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

"(2) The final regulations prescribed by the Commission pursuant to subparagraphs (A),

(B), and (C) of paragraph (1) shall not apply to a pole attachment used by a cable television system solely to provide cable service as defined in section 602(6) of this Act. The rates for pole attachments used for such purposes shall assure a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct, conduit, or right-of-way capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

"(3) For all providers of telecommunications services except members of the exchange carrier association established in 47 C.F.R. 69.601 as of December 31, 1993, upon enactment of this paragraph and until the Commission promulgates its final regulations pursuant to subparagraphs (A), (B), and (C) of paragraph (1), the rate formula contained in any joint use pole attachment agreement between the electric utility and the largest local exchange carrier having such a joint use agreement in the utility's service area, in effect on January 1, 1994, shall also apply to the pole attachments in the utility's service area, but if no such joint use agreement containing a rate formula exists, then the pole attachment rate shall be the rate applicable under paragraph (2) to cable television systems which solely provide cable service as defined in section 602(6) of this Act. Disputes concerning the applicability of a joint use agreement shall be resolved by the Commission or the States, as appropriate.".

SEC. 108. CIVIC PARTICIPATION.

(a) POLICIES TO ENHANCE CIVIC DIALOGUE.—The Commission, in consultation with the National Telecommunications and Information Administration, shall study policies that will enhance civic participation through the national information infrastructure. The study shall request and record public comments on Federal policies that would enhance and expand democratic dialogue through national computer and data networks. The study shall examine, but not be limited to, the social benefits of flat rate pricing for access to computer and data networks, the policies which will determine how access to computer networks will be priced, including the access needs of individuals with disabilities, and the appropriate role of common carriers in the development of national computer and data networks. The Commission shall receive comments in both paper and electronic formats and shall establish an online discussion group accessed through the national information infrastructure to encourage citizen participation in the study.

(b) PARTICIPATION IN REGULATORY AFFAIRS.—The Commission, in consultation with the Office of Consumer Affairs, shall conduct a study of how to encourage citizen participation in regulatory issues and, within 120 days from the date of enactment of this Act, report to Congress on the results of the study.

SEC. 109. COMPETITION BY SMALL BUSINESS AND MINORITY-OWNED BUSINESS CONCERNS.

Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 230. POLICY AND RULEMAKING TO PROMOTE DIVERSITY OF OWNERSHIP.

"(a) FINDINGS.—The Congress finds that—

"(1) in furtherance of the purposes of this Act to make available to all people of the United States a rapid and efficient communications service, and for the purposes of promoting a diversity of opinion in the broadcasting service, the Commission has established regulations and policies to promote ownership of broadcasting services by members of minority groups;

"(2) these regulations have served to promote more vigorous communications on public issues, to broaden the number and variety of stakeholders in the American economy, and to promote innovation by and creativity by Americans of different cultures and national origins, and thereby have served to build a more cohesive and productive society;

"(3) while the Commission has adopted regulations to promote participation by businesses owned by members of minority groups and women, and small businesses, in auctions for certain spectrum-based services which promote diversity of ownership in those services, no other regulations have been established to promote such diversity of participation in the provision of common carrier services or in the provision of other telecommunications and information services;

"(4) the goals of competitively priced services, service innovation, employment, and diversity of viewpoint can be advanced by promoting marketplace penetration by small business concerns, business concerns owned by women and members of minority groups, and nonprofit entities; and

"(5) it should be the policy of the Commission to promote whenever possible diversity of ownership in the provision of information services and telecommunication services by such concerns and entities.

"(b) RULEMAKING REQUIRED.—Within 1 year after the date of enactment of this section, the Commission, in consultation with the National Telecommunications and Information Administration, shall initiate a rulemaking proceeding for the purpose of lowering market entry barriers for small business, business concerns owned by women and members of minority groups, and nonprofit entities that are seeking to provide telecommunication services and information services. The proceeding shall seek to provide remedies for, among other things, lack of access to capital and technical and marketing expertise on the part of such concerns and entities. Consistent with the broad policy and finding set forth in subsection (a), the Commission shall adopt such regulations and make such recommendations to Congress as the Commission deems appropriate. Not later than 2 years after the date of enactment of this section, the Commission shall complete the proceeding required by this subsection.".

TITLE II—COMMUNICATIONS COMPETITIVENESS

SEC. 201. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.

(a) GENERAL REQUIREMENT.—

(1) AMENDMENT.—Section 613(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended to read as follows:

"(b)(1) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may, either through its own facilities or through an affiliate owned, operated, or controlled by, or under common control with, the common carrier, provide video programming directly to subscribers in its telephone service area.

"(2) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole, line, or conduit space, or other rental arrangements, to any entity which is directly or indirectly owned, operated, or controlled by, or under common control with, such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in its telephone service area.

"(3) Notwithstanding paragraphs (1) and (2), an affiliate that—

"(A) is, consistent with section 656, owned, operated, or controlled by, or under common control with, a common carrier subject in whole or in part to title II of this Act, and

"(B) provides video programming to subscribers in the telephone service area of such carrier, but

"(C) does not utilize the local exchange facilities or services of any affiliated common carrier in distributing such programming,

shall not be subject to the requirements of part V, but shall be subject to the requirements of this part and parts III and IV.".

(2) CONFORMING AMENDMENT.—Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended—

(A) in paragraph (6)(B), by inserting "or use" after "the selection";

(B) by redesignating paragraphs (18) and (19) as paragraphs (19) and (20) respectively; and

(C) by inserting after paragraph (17) the following new paragraph:

"(18) the term 'telephone service area' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provides telephone exchange service as of November 20, 1993, but if any common carrier after such date transfers its exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier;".

(b) PROVISIONS FOR REGULATION OF CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.—Title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.) is amended by adding at the end the following new part:

"PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

"SEC. 651. DEFINITIONS.

"For purposes of this part—

"(1) the term 'control' means—

"(A) an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest; or

"(B) if no single entity directly or indirectly has the right to vote more than 50 percent of the outstanding common stock or other ownership interest, actual working control, in whatever manner exercised, as defined by the Commission by regulation on the basis of relevant factors and circumstances, which shall include partnership and direct ownership interests, voting stock interests, the interests of officers and directors, and the aggregation of voting interests; and

"(2) the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area.

"SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.

"(a) IN GENERAL.—Except as provided in subsection (d) of this section, a common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such video programming is provided through a video programming affiliate that is separate from such carrier.

"(b) BOOKS AND MARKETING.—

"(1) IN GENERAL.—A video programming affiliate of a common carrier shall—

"(A) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

"(B) carry out directly (or through any nonaffiliated person) its own promotion, except that institutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs; and

"(C) not own real or personal property in common with such carrier.

"(2) INBOUND TELEMARKETING AND REFERRAL.—Notwithstanding paragraph (1)(B), a common carrier may provide telemarketing or referral services in response to the call of a customer or potential customer related to the provision of video programming by a video programming affiliate of such carrier. If such services are provided to a video programming affiliate, such services shall be made available to any video programmer or cable operator on request, on nondiscriminatory terms, at just and reasonable prices, and subject to regulations of the Commission to ensure that the carrier's method of providing telemarketing or referral and its price structure do not competitively disadvantage any video programmer or cable operator, regardless of size, including those which do not use the carrier's telemarketing services.

"(3) JOINT TELEMARKETING.—Notwithstanding paragraph (1)(B), a common carrier may petition the Commission for permission to market video programming directly, upon a showing that a cable operator or other entity directly or indirectly provides telecommunications services within the telephone service area of the common carrier, and markets such telecommunications services jointly with video programming services. The common carrier shall specify the geographic region covered by the petition. Any such petition shall be granted or denied within 180 days after the date of its submission.

"(c) BUSINESS TRANSACTIONS WITH CARRIER SUBJECT TO REGULATION.—Any contract, agreement, arrangement, or other manner of conducting business, between a common carrier and its video programming affiliate, providing for—

"(1) the sale, exchange, or leasing of property between such affiliate and such carrier,

"(2) the furnishing of goods or services between such affiliate and such carrier, or

"(3) the transfer to or use by such affiliate for its benefit of any asset or resource of such carrier,

shall be pursuant to regulation prescribed by the Commission, shall be on a fully compensatory and auditable basis, shall be without cost to the telephone service ratepayers of the carrier, shall be filed with the Commission, and shall be in compliance with regulations established by the Commission that will enable the Commission to assess the compliance of any transaction.

"(d) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive any of the requirements of this section for small telephone companies or telephone companies serving rural areas, if the Commission determines, after notice and comment, that—

"(A) such waiver will not affect the ability of the Commission to ensure that all video programming activity is carried out without any support from telephone ratepayers;

"(B) the interests of telephone ratepayers and cable subscribers will not be harmed if such waiver is granted;

"(C) such waiver will not adversely affect the ability of persons to obtain access to the video platform of such carrier; and

"(D) such waiver otherwise is in the public interest.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"(3) CONTINUED APPLICABILITY OF SECTION 659.—In the case of a common carrier that obtains a waiver under this subsection, any requirement that section 659 applies to a video programming affiliate shall instead apply to such carrier.

"SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.

"(a) COMMON CARRIER OBLIGATIONS.—

"(1) IN GENERAL.—Any common carrier subject to title II of this Act, and that provides video programming directly or indirectly to subscribers in its telephone service area, shall establish a video platform.

"(2) IDENTIFICATION OF DEMAND FOR CARRIAGE.—Any common carrier subject to the requirements of paragraph (1) shall, prior to establishing a video platform, submit a notice to the Commission of its intention to establish channel capacity for the provision of video programming to meet the bona fide demand for such capacity. Such notice shall—

"(A) be in such form and contain such information as the Commission may require by regulations pursuant to subsection (b);

"(B) specify the methods by which any entity seeking to use such channel capacity should submit to such carrier a specification of its channel capacity requirements; and

"(C) specify the procedures by which such carrier will determine (in accordance with the Commission's regulations under subsection (b)(1)(B)) whether such request for capacity are bona fide.

The Commission shall submit any such notice for publication in the Federal Register within 5 working days.

"(3) RESPONSE TO REQUEST FOR CARRIAGE.—After receiving and reviewing the requests for capacity submitted pursuant to such notice, such common carrier shall, subject to approval of a certificate under section 214, establish channel capacity that is sufficient to provide carriage for—

"(A) all bona fide requests submitted pursuant to such notice,

"(B) any additional channels required pursuant to section 659, and

"(C) any additional channels required by the Commission's regulations under subsection (b)(1)(C).

"(4) RESPONSES TO CHANGES IN DEMAND FOR CAPACITY.—Any common carrier that establishes a video platform under this section shall—

"(A) immediately notify the Commission and each video programming provider of any delay in or denial of channel capacity or service, and the reasons therefor;

"(B) continue to receive and grant, to the extent of available capacity, carriage in response to bona fide requests for carriage from existing or additional video programming providers;

"(C) if at any time the number of channels required for bona fide requests for carriage may reasonably be expected soon to exceed the existing capacity of such video platform, immediately notify the Commission of such expectation and of the manner and date by which such carrier will provide sufficient capacity to meet such excess demand; and

"(D) construct, subject to approval of a certificate under section 214, such additional capacity as may be necessary to meet such excess demand.

"(5) DISPUTE RESOLUTION.—The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages 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 seek any other remedy available under this Act.

"(b) COMMISSION REGULATIONS.—

"(1) IN GENERAL.—Within one year after the date of the enactment of this section, the Commission shall prescribe regulations that—

"(A) consistent with the requirements of section 659, prohibit a common carrier from discriminating among video programming providers with regard to carriage on its video platform, and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

"(B) prescribe definitions and criteria for the purposes of determining whether a request shall be considered a bona fide request for purposes of this section;

"(C) establish a requirement that video platforms contain a suitable margin of unused channel capacity to meet reasonable growth in bona fide demand for such capacity;

"(D) extend to video platforms the Commission's regulations concerning network nonduplication (47 C.F.R. 76.92 et seq.) and syndicated exclusivity (47 C.F.R. 76.151 et seq.);

"(E) require the video platform to provide service, transmission, interconnection, and interoperability for unaffiliated or independent video programming providers that is equivalent to that provided to the common carrier's video programming affiliate;

"(F)(i) prohibit a common carrier from discriminating among video programming providers with regard to material or information provided by the common carrier to subscribers for the purposes of selecting programming on the video platform, or in the way such material or information is presented to subscribers;

"(ii) require a common carrier to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers; and

"(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

"(G) prohibit a common carrier from excluding areas from its video platform service area on the basis of the ethnicity, race, or income of the residents of that area, and provide for public comments on the adequacy of the proposed service area on the basis of the standards set forth under this subparagraph.

"(2) EXTENSION OF REGULATIONS TO OTHER HIGH CAPACITY SYSTEMS.—The Commission shall extend the requirements of the regulations prescribed pursuant to this section, in lieu of the requirements of section 612, to any cable operator of a cable system that has installed a switched, broadband video programming delivery system, except that the Commission shall not extend the requirements of the regulations prescribed pursuant to subsection (b)(1)(D) or any other requirement that the Commission determines is clearly inappropriate.

"(c) COMMISSION INQUIRY.—The Commission shall conduct a study of whether it is in the public interest to extend the requirements of subsection (a) to any other cable operators in lieu of the requirements of section 612. The Commission shall submit to the Congress a report on the results of such study not later than 2 years after the date of enactment of this section.

"SEC. 654. EQUAL ACCESS COMPLIANCE.

"(a) CERTIFICATION REQUIRED.—

"(1) IN GENERAL.—A common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such carrier has certified to the Commission that such carrier is in compliance with the requirements of paragraphs (1) and (2) of section 201(c) of this Act, and regulations prescribed pursuant to such paragraphs.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a common carrier subject to title II of this Act may provide video programming directly to subscribers in its telephone service area during any period prior to the date the Commission first prescribes final regulations pursuant to paragraphs (1) and (2) of section 201(c) of this Act if such carrier has certified to the Commission that such carrier is in compliance with State laws and regulations concerning equal access, interconnection, and unbundling that are substantially similar to and fully consistent with the requirements of such paragraphs or if there is no statutory prohibition against such carrier providing video programming directly to subscribers in its telephone service area on the date of enactment of this section. A common carrier that is permitted to provide video programming under this paragraph prior to the effective date of such regulations shall not be exempt from the requirements of paragraph (1) after the effective date of such final regulations.

"(b) CERTIFICATION AND APPLICATION APPROVAL.—A common carrier that submits a certification under paragraph (1) or (2) of subsection (a) shall be eligible to provide video programming to subscribers in accordance with the requirements of this part, subject to the approval of any necessary application under section 214 for authority to establish a video platform. An application under section 214 may be filed simultaneously with the filing of such certification or at any time after the date of enactment of this section, and the Commission shall act to approve (with or without modification) or reject such application within 180 days after the date of its submission. If the Commission acts to approve such an application prior to the filing of such certification, such approval shall not be effective until such certification is filed.

"SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.

"(a) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

"(1) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing video programming services by the common carrier or affiliate; and

"(2) ensure such competing video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing video programming services.

"(b) CABLE OPERATOR PROHIBITIONS.—The Commission shall prescribe regulations to prohibit a cable operator from engaging in any practice that results in improper cross-subsidization between its regulated cable operations and its provision of telecommunications service, either directly or through an affiliate.

"SEC. 656. PROHIBITION ON BUYOUTS.

"(a) GENERAL PROHIBITION.—No common carrier that provides telephone exchange service, and no entity owned by or under common ownership or control with such carrier, may purchase or otherwise obtain control over any cable system that is located within its telephone service area and is owned by an unaffiliated person.

"(b) EXCEPTIONS.—Notwithstanding subsection (a), a common carrier may—

"(1) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system that serves a rural area;

"(2) obtain, in addition to any interest, joint venture, or partnership obtained or formed pursuant to paragraph (1), a controlling interest in, or form a joint venture or other partnership with, any cable system or systems if—

"(A) such systems in the aggregate serve less than 10 percent of the households in the telephone service area of such carrier; and

"(B) no such system serves a franchise area with more than 35,000 inhabitants, except that a common carrier may obtain such interest or form such joint venture or other partnership with a cable system that serves a franchise area with more than 35,000 but not more than 50,000 inhabitants if such system is not affiliated (as such term is defined in section 602) with any other system whose franchise area is contiguous to the franchise area of the acquired system;

"(3) obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of such a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission; or

"(4) obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as 'the subject cable system'), if—

"(A) the subject cable system operates in a television market that is not in the top 25 markets, and that has more than 1 cable system operator, and the subject cable system is not the largest cable system in such television market;

"(B) the subject cable system and the largest cable system in such television market held on March 1, 1994, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

"(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 largest cable system operators as existed on March 1, 1994; and

"(D) the largest system in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as existed on March 1, 1994.

"(c) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive the restrictions in subsection (a) of this section only upon a showing by the applicant that—

"(A) because of the nature of the market served by the cable system concerned—

"(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

"(ii) the cable system would not be economically viable if such subsection were enforced; and

"(B) the local franchising authority approves of such waiver.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"SEC. 657. PENALTIES.

"If the Commission finds that any common carrier has knowingly violated any provision of this part, the Commission shall assess such fines and penalties as it deems appropriate pursuant to this Act.

"SEC. 658. CONSUMER PROTECTION.

"(a) JOINT BOARD REQUIRED.—Within 30 days after the date of enactment of this part, the Commission shall convene a Federal-State Joint Board under the provisions of section 410(c) for the purpose of recommending a decision concerning the practices, classifications, and regulations as may be necessary to ensure proper jurisdictional separation and allocation of the costs of establishing and providing a video platform. The Board shall issue its recommendations to the Commission within 270 days after the date of enactment of this part.

"(b) COMMISSION REGULATIONS REQUIRED.—The Commission, with respect to interstate switched access service, and the States, with respect to telephone exchange service and intrastate interexchange service, shall establish such regulations as may be necessary to implement section 655 within one year after the date of the enactment of this part.

"(c) NO EFFECT ON CARRIER REGULATION AUTHORITY.—Nothing in this section shall be construed to limit or supersede the authority of any State or the Commission with respect to the allocation of costs associated with intrastate or interstate communication services.

"SEC. 659. APPLICABILITY OF FRANCHISE AND OTHER REQUIREMENTS.

"(a) IN GENERAL.—Any provision that applies to a cable operator under—

"(1) sections 613, 616, 617, 628, 631, 632, and 634 of this title, shall apply,

"(2) sections 611, 612, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under subsection (b), and

"(3) parts III and IV (other than sections 628, 631, 632, and 634) of this title shall not apply,

to any video programming affiliate established by a common carrier in accordance with the requirements of this part.

"(b) IMPLEMENTATION OF REQUIREMENTS.—

"(1) REGULATIONS.—The Commission shall prescribe regulations to ensure that a video programming affiliate of a common carrier shall provide (A) capacity, services, facilities, and equipment for public, educational, and governmental use, (B) capacity for commercial use, (C) carriage of commercial and non-commercial broadcast television stations, and (D) an opportunity for commercial broadcast stations to choose between mandatory carriage and reimbursement for retransmission of the signal of such station. In prescribing such regulations, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in subsection (a)(2) of this section. Such regulations shall also require that, if a common carrier establishes a video platform but does not provide or ceases to provide video programming through a video programming affiliate, such carrier shall comply with the regulations prescribed under this paragraph and with the provisions described in subsection (a)(1) in the operation of its video platform.

"(2) FEES.—A video programming affiliate of any common carrier that establishes a video platform under this part, and any multichannel video programming distributor offering a competing service using such video platform (as determined in accordance with regulations of the Commission), shall be subject to the payment of fees imposed by a local franchising authority, in lieu of the fees required under section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the same service area.

"SEC. 660. RURAL AREA EXEMPTION.

"The provisions of sections 652, 653, 654, and 656 shall not apply to video programming provided in a rural area by a common carrier that provides telephone exchange service in the same area.".

SEC. 203. REVIEW OF BROADCASTERS' OWNERSHIP RESTRICTIONS.

Within one year after the date of enactment of this Act, the Commission shall, after a notice and comment proceeding, prescribe regulations to modify, maintain, or remove the ownership regulations on radio and television broadcasters as necessary to ensure that broadcasters are able to compete fairly with other information providers while protecting the goals of diversity and localism.

SEC. 203. REVIEW OF STATUTORY OWNERSHIP RESTRICTION.

Within one year after the date of enactment of this Act, the Commission shall review the ownership restriction in section 613(a)(1) of the Communications Act of 1934 (47 U.S.C. 553(a)(1)) and report to Congress whether or not such restriction continues to serve the public interest.

SEC. 204. BROADCASTER SPECTRUM FLEXIBILITY.

(a) REGULATIONS REQUIRED.—If the Commission determines to issue additional licenses for advanced television services, and initially limits the eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both), the Commission shall adopt regulations that allow such licensees or permittees to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

(b) CONTENTS OF REGULATIONS.—In prescribing the regulations required by subsection (a), the Commission shall—

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is indivisible from the use of such designated frequency for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

(3) treat any such ancillary or supplementary services for which the licensee or permittee solicits and receives compensation in return for transmitting commercial advertising as broadcast services for the purposes of the Communications Act of 1934 and the Children's Television Act of 1990 (47 U.S.C. 303a), and the Commission's regulations thereunder, including regulations promulgated pursuant to section 315 of the Communications Act of 1934 (47 U.S.C. 315);

(4) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person;

(5) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, including regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(6) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(c) RECOVERY OF LICENSE.—

(1) CONDITIONS REQUIRED.—If the Commission limits the eligibility for licenses to provide advanced television services in the manner described in subsection (a), the Commission shall, as a condition of such license, require that, upon a determination by the Commission pursuant to the regulations prescribed under paragraph (2), either the additional license or the original license held by the licensee be surrendered to the Commission in accordance with such regulations for reallocation or reassignment (or both) pursuant to Commission regulation.

(2) REGULATIONS.—The Commission shall prescribe regulations establishing criteria for rendering determinations concerning license surrender pursuant to license conditions required by paragraph (1). Such regulations shall—

(A) require such determinations to be based on whether the substantial majority of the public have obtained television receivers that are capable of receiving advanced television services; and

(B) not require the cessation of the broadcasting if such cessation would render the television receivers of a substantial portion of the public useless, or otherwise cause undue burdens on the owners of such television receivers.

(d) FEES REQUIRED.—

(1) SERVICES TO WHICH FEES APPLY.—If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency—

(A) for which the 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 commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish by regulation a program to assess and collect an annual fee or royalty payment.

(2) CRITERIA FOR REGULATIONS.—The regulations required by paragraph (1) shall—

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that is, to maximum extent feasible, equal (over the term of the license) to the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) and the Commission's regulations thereunder; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

(3) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

(4) REPORT.—Within 5 years after the date of the enactment of this section, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

(e) EVALUATION REQUIRED.—Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include—

(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees in order to issue additional licenses for the provision of advanced television services.

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

(1) ADVANCED TELEVISION SERVICES.—The term "advanced television services" means television services provided using digital or other advanced technology to enhance audio quality and video resolution, as further defined in the opinion, report, and order of the Commission entitled "Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service", MM Docket 87-268, adopted September 17, 1992, and successor proceedings.

(2) DESIGNATED FREQUENCIES.—The term "designated frequency" means each of the frequencies designated by the Commission for licenses for advanced television services.

(3) HIGH DEFINITION TELEVISION.—The term "high definition television" refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on the date of enactment of this section, as further defined in the proceedings described in paragraph (1) of this subsection.

SEC. 205. INTERACTIVE SERVICES AND CRITICAL INTERFACES.

(a) FINDINGS.—The Congress finds that—

(1) the convergence of communications, computing, and video technologies will permit improvements in interoperability between and among those technologies;

(2) in the public switched telecommunications network, open protocols and technical requirements for connection between the network and the consumer, and the availability of unbundled customer equipment through retailers and other third party vendors, have served to broaden consumer choice, lower prices, and spur competition and innovation in the customer equipment industry;

(3) set-top boxes and other interactive communications devices could similarly serve as a critical gateway between American homes and businesses and advanced telecommunications and video programming networks;

(4) American consumers have benefited from the ability to own or rent customer premises equipment obtained from retailers and other vendors and the ability to access the network with portable, compatible equipment;

(5) in order to promote diversity, competition, and technological innovation among suppliers of equipment and services, it may be necessary to make certain critical interfaces with such networks open and accessible to a broad range of equipment manufacturers and information providers;

(6) the identification of critical interfaces with such networks and the assessment of their openness must be accomplished with due recognition that open and accessible systems may include standards that involve

both nonproprietary and proprietary technologies;

(7) such identification and assessment must also be accomplished with due recognition of the need for owners and distributors of video programming and information services to ensure system and signal security and to prevent theft of service;

(8) whenever possible, standards in dynamic industries such as interactive systems are best set by the marketplace or by private sector standard-setting bodies; and

(9) the role of the Commission in this regard is—

(A) to identify, in consultation with industry groups, consumer interests, and independent experts, critical interfaces with such networks (i) to ensure that end users can connect information devices to such networks, and (ii) to ensure that information service providers are able to transmit information to end users, and

(B) as necessary, to take steps to ensure these networks and services are accessible to a broad range of equipment manufactures, information providers, and program suppliers.

(b) INQUIRY REQUIRED.—Within 6 months after the date of the enactment of this Act, the Commission shall commence an inquiry—

(1) to examine the impact of the convergence of technologies on cable, telephone, satellite, and wireless and other communications technologies likely to offer interactive communications services;

(2) to ascertain the importance of maintaining open and accessible systems in interactive communications services;

(3) to examine the costs and benefits of maintaining varying levels of interoperability between and among interactive communications services;

(4) to examine the costs and benefits of establishing open interfaces (A) between the network provider and the set-top box or other interactive communications devices used in the home or office, and (B) between network providers and information service providers, and to determine how best to establish such interfaces;

(5) to determine methods by which converter boxes or other interactive communications devices may be sold through retailers and other third party vendors and to determine the vendors' responsibilities for ensuring that their devices are interoperable with interactive networks;

(6) to assess how the security of cable, satellite, and other interactive systems or their services can continue to be ensured with the establishment of an interface between the network and a converter box or other interactive communications device, including those manufactured and distributed at retail by entities independent of network providers and information service providers, and to determine the responsibilities of such independent entities for assuring network security and for conforming to signal interference standards;

(7) to ascertain the conditions necessary to ensure that any critical interface is available to information and content providers and others who seek to design, build, and distribute interoperable devices for these networks so as to ensure network access and fair competition for independent information providers and consumers;

(8) to assess the impact of the deployment of digital technologies on individuals with disabilities, with particular emphasis on any regulatory, policy, or design barriers which would limit functionally equivalent access by such individuals;

(9) to assess current regulation of telephone, cable, satellite, and other communications delivery systems to ascertain how best to ensure interoperability between those systems;

(10) to assess the adequacy of current regulation of telephone, cable, satellite, and other communications delivery systems with respect to bundling of equipment and services and to identify any changes in unbundling regulations necessary to assure effective competition and encourage technological innovation, consistent with the finding in subsection (a)(6) and the objectives of paragraph (6) of this subsection, in the market for converter boxes or interactive communications devices and for other customer premises equipment;

(11) to solicit comment on any changes in the Commission's regulations that are necessary to ensure that diversity, competition, and technological innovation are promoted in communications services and equipment; and

(12) to prepare recommendations to the Congress for any legislative changes required.

(c) REPORT TO CONGRESS.—Within 12 months after the date of the enactment of this Act, the Commission shall submit to the Congress a report on the results of the inquiry required by subsection (b). Within 6 months after the date of submission of such report, the Commission shall prescribe such changes in its regulations as the Commission determines are necessary pursuant to subsection (b)(10).

(d) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this section shall be construed as limiting, superseding, or otherwise modifying the existing authority and responsibilities of the Commission or National Institute of Standards and Technology.

SEC. 206. VIDEO PROGRAMMING ACCESSIBILITY.

(a) INQUIRY REQUIRED.—Within 180 days after the date of enactment of this section, the Federal Communications Commission shall complete an inquiry to ascertain the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

(b) CONTENTS OF REGULATIONS.—Within 18 months after the date of enactment, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that—

(1) video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, except as provided in subsection (d); and

(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d).

(c) CONTENTS OF REGULATIONS.—Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.

(d) EXEMPTIONS.—Notwithstanding subsection (b)—

(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of close captioning would be economically burdensome to the provider or owner of such programming;

(2) 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 contracts in effect on the date of enactment of this Act, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and

(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

(e) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered include—

(1) the nature and cost of the closed captions for the programming;

(2) the impact on the operation of the provider or program owner;

(3) the financial resources of the provider or program owner; and

(4) the type of operations of the provider or program owner.

(f) ADDITIONAL PROCEEDING ON VIDEO DESCRIPTIONS REQUIRED.—Within 6 months after the date of enactment of this Act, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate. Following the completion of such inquiry, the Commission may adopt regulation it deems necessary to promote the accessibility of video programming to persons with visual impairments.

(g) MODEL PROGRAM.—The National Telecommunications and Information Administration shall establish and oversee, and (to the extent of available funds) provide financial support for, marketplace tests of video descriptions on commercial and noncommercial video programming services.

(h) VIDEO DESCRIPTION.—For purposes of this section, "video description" means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

SEC. 207. PUBLIC ACCESS.

Within one year after the date of enactment of this Act, the Federal Communications Commission shall prescribe regulations to reserve appropriate capacity for the public at preferential rates on cable systems and video platforms.

SEC. 208. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Notwithstanding any provision of the Communications Act of 1934, 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 station operated by one or more radio officers or operators.

SEC. 209. EXCLUSIVE FEDERAL JURISDICTION OVER DIRECT BROADCAST SATELLITE SERVICE.

Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

"(v) Have exclusive jurisdiction over the regulation of the direct broadcast satellite service.".

SEC. 210. TECHNICAL AMENDMENTS.

(a) RETRANSMISSION.—Section 325(b)(2)(D) of the Communications Act of 1934 (47 U.S.C. 325(b)(2)(D)) is amended to read as follows:

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if (i) the customers served by the cable operator or other multichannel video programming distributor reside outside the originating station's television market, as defined by the Commission for purposes of section 614(h)(1)(C); (ii) such signal was obtained from a satellite carrier or terrestrial microwave common carrier; and (iii) and the origination station was a superstation on May 1, 1991.

(b) MARKET DETERMINATIONS.—Section 614(h)(1)(C)(i) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C)(i)) is amended by striking out "in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991," and inserting "by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns,".

SEC. 211. AVAILABILITY OF SCREENING DEVICES TO PRECLUDE DISPLAY OF ENCRYPTED PROGRAMMING.

(a) CUSTOMER NOTICE.—Section 624(d)(2)(A) of the Communications Act of 1934 (47 U.S.C. 544(d)(2)(A)) is amended by adding at the end the following new sentence: "Upon beginning service to any new subscriber and not less frequently than once each calendar year for current subscribers, the cable operator shall inform subscribers of the right to request and obtain such device.".

(b) SIGNAL LEAKAGE.—Section 624(d)(2) of such Act is further amended by adding at the end the following new subparagraph:

"(C) The Commission shall prescribe regulations to require, to the extent technically feasible, the transmission of programming described in subparagraph (A) by means of encrypted signals that permit subscribers to effectively and entirely prevent the display of both the audio and video portions of such programming with or without the use of a device described in subparagraph (A).".

TITLE III—PROCUREMENT PRACTICES OF TELECOMMUNICATIONS PROVIDERS

SEC. 301. FINDINGS.

The Congress finds the following:

(1) It is in the public interest for business enterprises owned by minorities and women to participate in procurement contracts of all providers of telecommunications services.

(2) The opportunity for full participation in our free enterprise system by business enterprises that are owned by minorities and women is essential if this Nation is to attain social and economic equality for those businesses and improve the functioning of the national economy.

(3) It is in this Nation's interest to expeditiously improve the economically disadvantaged position of business enterprises that are owned by minorities and women.

(4) The position of these businesses can be improved through the development by the providers of telecommunications services of substantial long-range and annual goals, which are supported by training and technical assistance, for the purchase, to the maximum practicable extent, of technology, equipment, supplies, services, material and construction from minority business enterprises.

(5) Procurement policies which include participation of business enterprises that are owned by minorities and women also benefit the communication industry and its consumers by encouraging the expansion of the numbers of suppliers for procurement, thereby encouraging competition among suppliers and promoting economic efficiency in the process.

SEC. 302. PURPOSE.

The purposes of this title are—

(1) to encourage and foster greater economic opportunity for business enterprises that are owned by minorities and women;

(2) to promote competition among suppliers to providers of telecommunications services and their affiliates to enhance economic efficiency in the procurement of telephone corporation contracts and contracts of their State commission-regulated subsidiaries and affiliates;

(3) to clarify and expand a program for the procurement by State and federally-regulated telephone companies of technology, equipment, supplies, services, materials and construction work from business enterprises that are owned by minorities and women; and

(4) to ensure that a fair proportion of the total purchases, contracts, and subcontracts for supplies, commodities, technology, property, and services offered by the providers of telecommunications services and their affiliates are awarded to minority and women business enterprises.

SEC. 303. ANNUAL PLAN SUBMISSION.

(a) ANNUAL PLANS REQUIRED.—

(1) IN GENERAL.—The Commission shall require each provider of telecommunications services to submit annually a detailed and verifiable plan for increasing its procurement from business enterprises that are owned by minorities or women in all categories of procurement in which minorities are under represented.

(2) CONTENTS OF PLANS.—The annual plans required by paragraph (1) shall include (but not be limited to) short- and long-term progressive goals and timetables, technical assistance, and training and shall, in addition to goals for direct contracting opportunities, include methods for encouraging both prime contractors and grantees to engage business enterprises that are owned by minorities and women in subcontracts in all categories in which minorities are under represented.

(3) IMPLEMENTATION REPORT.—Each provider of telecommunications services shall furnish an annual report to the Commission regarding the implementation of programs established pursuant to this title in such form as the Commission shall require, and at such time as the Commission shall annually designate.

(4) REPORT TO CONGRESS.—The Commission shall provide an annual report to Congress, beginning in January 1995, on the progress of activities undertaken by each provider of telecommunications services regarding the implementation of activities pursuant to this title to develop business enterprises that are owned by minorities or women. The report shall evaluate the accomplishments under this title and shall recommend a program for enhancing the policy declared in this title, together with such recommendations for legislation as it deems necessary or desirable to further that policy.

(b) REGULATIONS AND CRITERIA FOR DETERMINING ELIGIBILITY OF MINORITY BUSINESS ENTERPRISES FOR PROCUREMENT CONTRACTS.—

(1) IN GENERAL.—The Commission shall establish regulations for implementing programs pursuant to this title that will govern providers of telecommunications services and their affiliates.

(2) VERIFYING CRITERIA.—The Commission shall develop and publish regulations setting forth criteria for verifying and determining the eligibility of business enterprises that are owned by minorities or women for procurement contracts.

(3) OUTREACH.—The Commission's regulations shall require each provider of telecommunications services and its affiliates to develop and to implement an outreach program to inform and recruit business enterprises that are owned by minorities or women to apply for procurement contracts under this title.

(4) ENFORCEMENT.—The Commission shall establish and promulgate such regulations necessary to enforce the provisions of this title.

(c) WAIVER AUTHORITY.—The requirements of this section may be waived, in whole or in part, by the Commission with respect to a particular contract or subcontract in accordance with guidelines set forth in regulations which the Commission shall prescribe when it determines that the application of such regulations prove to result in undue hardship or unreasonable expense to a provider of telecommunications services.

SEC. 304. SANCTIONS AND REMEDIES.

(a) FALSE REPRESENTATION OF BUSINESSES; SANCTIONS.—

(1) IN GENERAL.—Any person or corporation, through its directors, officers, or agent, which falsely represents the business as a business enterprise that are owned by minorities or women in the procurement or attempt to procure contracts from telephone operating companies and their affiliates pursuant to this article, shall be punished by a fine of not more than $5,000, or by imprisonment for a period not to exceed 5 years of its directors, officers, or agents responsible for the false statements, or by both fine and imprisonment.

(2) HOLDING COMPANIES.—Any provider of telecommunications services which falsely represents its annual report to the Commission or its implementation of its programs pursuant to this section shall be subject to a fine of $100,000 and be subject to a penalty of up to 5 years restriction from participation in lines of business activities provided for in this title.

(b) INDEPENDENT CAUSE OF ACTION, REMEDIES, AND ATTORNEY FEES.—

(1) DISCRIMINATION PROHIBITED.—No otherwise qualified business enterprise that are owned by minorities or women shall solely, by reason of its racial, ethnic, or gender composition be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in procuring contracts from telephone utilities.

(2) CIVIL ACTIONS AUTHORIZED.—Whenever a qualified business enterprise that is owned by minorities or women has reasonable cause to believe that a provider of telecommunications services or its affiliate is engaged in a pattern or practice of resistance to the full compliance of any provision of this title, the business enterprise may bring a civil action in the appropriate district court of the United States against the provider of telecommunications services or its affiliate requesting such monetary or injunctive relief, or both, as deemed necessary to ensure the full benefits of this title.

(3) ATTORNEYS' FEES AND COSTS.—In any action or proceeding to enforce or charge of a violation of a provision of this title, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

SEC. 305. DEFINITIONS.

For the purpose of this title, the following definitions apply:

(1) The term "business enterprise owned by minorities or women" means—

(A) a business enterprise that is at least 51 percent owned by a person or persons who are minority persons or women; or

(B) in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more persons who are minority persons or women, and whose management and daily business operations are controlled by one or more of those persons.

(2) The term "minority person" means persons who are Black Americans, Hispanic Americans, Native Americans, Asian Americans, and Pacific Americans.

(3) The term "control" means exercising the power to make financial and policy decisions.

(4) The term "operate" means the active involvement in the day-to-day management of the business and not merely being officers or directors.

(5) The term "Commission" means the Federal Communications Commission.

(6) The term "telecommunications service" has the meaning provided in section 3(mm) of the Communications Act of 1934 (as added by this Act).

TITLE IV—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) EFFECT ON FEES.—For purposes of section 9(b)(2) of the Communications Act of 1934 (47 U.S.C. 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a) of such Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes, and the gentleman from Texas [Mr. FIELDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

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

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

Mr. MARKEY. Mr. Speaker, today, I rise to bring before the House a bill that represents what I believe to be the Nation's roadmap for the information superhighway.

The purpose of this bill is to help consumers by promoting a national communications and information infrastructure. This legislation seeks to accomplish that goal by encouraging the deployment of advanced communications services and technologies through competition, by safeguarding ratepayers and competitors from potential anticompetitive abuses, and by preserving and enhancing universal service.

This bill has three key components. First, the bill will preserve and enhance the goal of providing to all Americans high-quality phone service at just and reasonable rates. This goal of universal service is one of the proudest achievements of our Nation during the 20th century, and this legislation will ensure it endures beyond the year 2000.

Second, the legislation will promote and accelerate competition to the cable television industry by permitting telephone companies to compete in offering video programming. Specifically, the bill would rescind the statutory ban on telephone company ownership and delivery of video programming. Telephone companies would be permitted, through a separate subsidiary, to provide video programming to their subscribers so long as they establish an open system to permit others to use their video platforms. But they must enter the business the old fashion way: by building a new system and not just buying up an existing system.

Third, the legislation will promote competition in the local telephone market. This market is one of the last monopoly markets in the entire telecommunications universe. We all have witnessed how the long-distance market and the telecommunications equipment market has benefited tremendously from competition. Just 10 years ago, you had one choice in long distance—AT&T—and one choice for a phone—black rotary dial. Through Federal policies, hundreds of equipment makers and long distance companies now exist, proving rigorous competition. We can see those same benefits in the local telephone market, and they benefit consumers by giving them more choice at lower prices.

The bill before the House reflects a handful of changes that have been made to the bill to reflect a number of minor issues that have been raised. At this time I ask unanimous consent that a joint statement explaining these changes appear in the RECORD after my remarks.

In conclusion, this legislation has benefited tremendously from the close working relationship among all the members of the Committee on Energy and Commerce. We have succeeded, I believe, in crafting a bill that addresses many of the tough issues and strikes a fair balance on a number of difficult issues.

I strongly urge all Members to support this bill.

JOINT EXPLANATION OF H.R. 3636

The bill considered by the House today contains several changes that address issues brought to the attention of the Members since the bill was reported out of committee. We want to take this opportunity to explain those changes.

Section 201(c)(3)(B) also has been altered to make certain that States can adopt provisions relating to the public safety and welfare and for other reasons enumerated in clauses (i)–(iv), if such term or conditions does not effectively prohibit any person or carrier from providing a telecommunications service. This language clarifies that States can establish terms and conditions, consistent with subparagraph (A), so long as such term and condition does not amount to an effective prohibition. This standard was borrowed from subparagraph (A), and is consistent with the overarching goal of enabling States to impose necessary and appropriate terms and conditions so long as they do not amount to an effective prohibition on entry into the telecommunications business.

Section 201(c)(3)(C) has been added to make clear that the language preempting State and local entry barriers shall not be construed to prohibit a local government from requiring a carrier or other person to obtain ordinary and usual construction or similar permits for its operations. This provision is intended to make certain that local governments have authority to oversee street closings and excavations and related activity as may be necessary in the ordinary course of constructing telecommunications facilities.

Subparagraph (C) also makes clear that this language does not give local governments the power to use construction and other permits to impose conditions that effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service. This should be treated as the same standard as set forth in subparagraph (A) and (B).

Section 201(d)(3)(F) contains a broader directive to the Commission to study how open platform service and other advanced network capabilities, including broadband telecommunications facilities, have been deployed. Thus, the Commission will seek information concerning how open platform service and other similar advanced network capabilities have been deployed throughout the country, consistent with the information enumerated in clauses (i)–(iv).

Section 201(e)(3) was amended to direct the Commission to establish regulations on infrastructure sharing between large local exchange carriers [LEC] and "qualifying carriers" so that a large LEC would not be required to share its facilities with a qualifying carrier that is not reasonably proximate to the large telephone company. This limiting principle was added so that a large LEC would not face requests, or demands, for infrastructure sharing from qualifying carriers across the country, but only from carriers that were "reasonably proximate" to the large LEC. Without this limiting principle, there was a legitimate concern that this open-ended requirement could have acted as a disincentive to large LEC's to deploy advanced capabilities.

Section 108 has been amended to direct the Commission to receive comments in electronic formats and to establish an online method of conducting some of its business. This requirement helps the Commission stay current with the burgeoning telecommunications industry. In addition, this section now contains references to the "national information infrastructure," which is a broader term than "Internet," which was in the committee bill.

Section 109 contains additional congressional findings recognizing rules the Commission has adopted to promote participation by minority groups and women, and small businesses. This language should not be construed to confer any approval or disapproval on regulations the Commission has adopted with respect to promoting minority participation in communications services.

In title II, section 210(a) clarifies that the obligation not to retransmit the signal of a broadcasting station without consent of the originating station does not extend to retransmission of superstation signals by microwave common carrier. Section 210(a) also restricts the exemption in section 325(b)(2)(D) to retransmission of superstation signals to customers outside of the originating station's television market.

Section 210(b) eliminates the existing statutory basis for determining television markets, as used in this title, and instead grants the Commission authority to choose an appropriate definition based on commercial publications. The Commission is directed to determine television markets by regulation or order to give interested parties appropriate notice and opportunity to comment.

Section 653 has been amended to make clear that any common carrier subject to title II of the Communications Act of 1934, and that provides video programming directly or indirectly to its subscribers, shall establish a video platform and otherwise comply with the requirements contained in section 653. This change clarifies that all common carriers that seek to provide video programming to their subscribers, directly or indirectly, must adhere to the important safeguards that have been built into this section.

Section 656(b)(4) has been narrowly expanded to permit joint ventures, or purchases, of cable systems in unique circumstances. The intent behind this amendment is to promote implementation of facilities-based competition in the delivery of video programming in a narrow class of circumstances where such a goal may be impeded by the general provisions of section 656. The test set forth in paragraph (4) requires that the "subject cable system" operates in a television market that is not in the top 25 markets, and that the market is characterized by at least 2 systems, where the largest cable system in the market is owned or controlled or under common ownership of any of the top 10 largest multiple system operators [MSO's]. In addition, paragraph (4) requires that the "subject cable system" is not owned or controlled by any of the 50 largest MSOs. Finally, the language in subparagraph (B) describes the situation where the largest cable system and the subject cable system both held franchises, as of March 1, 1994, from the largest municipality in the television market, and that each franchisee could offer cable service in the entirety of the franchise area of the other cable system. In that sense, each had a nonexclusive franchise from the largest municipality.

In light of these narrow and exceptional circumstances, it is my view that the two-wire goal actually would be advanced by permitting a telephone company to invest in the subject cable company.

Section 654(a)(2) has been clarified to make certain that all local exchange carriers must comply with the certification requirement contained in section 654(a)(1), regardless of whether they were permitted provide video programming by virtue of State laws and regulations on interconnection and equal access that were substantially similar to the requirements of section 201(c), or by virtue of a court holding that the cable/telco prohibition was not applicable to a particular carrier. Thus, all carriers must certify compliance with section 201(c) after the effective date of the regulations promulgated pursuant to such section.

THE NATIONAL COMMUNICATIONS COMPETITION AND INFORMATION INFRASTRUCTURE ACT OF 1994

Mr. Speaker, it is with great pleasure that I rise today to offer to my colleagues in the full U.S. House of Representatives H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994. This legislation represents a comprehensive reform package that will facilitate the most extensive legislative overhaul in the telecommunications industry since passage of the Communications Act of 1934. This bill, in combination with H.R. 3626, the Antitrust Reform Act of 1993, will serve as the blueprint for the development of the information superhighway, and will encourage the deployment of advanced digital communications to homes and businesses throughout the Nation.

In presenting this legislation today, I am joined by a bipartisan majority of the Subcommittee on Telecommunications and Finance, the subcommittee of origin for H.R. 3636. I am also pleased to acknowledge the endorsement of Vice President Gore and representatives of the Clinton administration.

I offer this legislation to my colleagues on the floor today with one goal in mind: to benefit consumers by facilitating competition between and among the cable and telephone industries in the delivery of video services. H.R. 3636 will fulfill this goal by establishing the guidelines that will allow telephone companies to offer multichannel video programming in competition with traditional cable companies. It will create competition in the local telephone exchange by requiring telephone companies to offer interconnection and equal access to their networks. And, most important, H.R. 3636 embraces the fundamental philosophy of universal service embodied in our communications policy which is to ensure that all Americans have access to basic telephone service at affordable rates. Together, these principles will promote and accelerate advances in, and access to, new and improved telecommunications capabilities.

In the short term, the advent of competition between these billion-dollar industries will translate into fast-paced job growth within the communications, electronics, and programming fields. Traditional cable companies, recognizing the potential competitive threat, will speed up their efforts to increase bandwidth by converting their systems to a digital-based fiber network, thereby increasing their channel capacity and facilitating their emergence into the realm of interactive communications. Expanded channel capacity will stimulate demand for the creation of new programming, initially in the form of traditional cable programming and new cable channels, and, eventually, in the form of interactive video services.

The anticipation surrounding the enormous lucrative potential for the development of these new, interactive services—ranging from interactive videogame channels to at-home banking availability—has fueled the drive toward passage of this bill. Already, the demand for channel capacity has outpaced the availability of channel program offerings. This demand, in fact, has led to a proliferation of announcements of cable channels and new video services planned for future deployment: an interactive TV-game-show channel; pay-per-view movie channels where the consumer may choose from an on-screen display of options; or the SegaChannel, providing interactive videogames for at-home play. In the long term, we can expect that the convergence of these behemoth communications industries will spawn the development of entire new industries.

As we vote today on H.R. 3636, we are endowed with an abundance of information on the consequences and implications of a decision to support the convergence of the cable and telephone industries in today's marketplace. This extensive record of knowledge has been gathered by my subcommittee through a total of 11 hearings throughout the 103d Congress. In February of this year, the subcommittee held seven hearings on the issue of H.R. 3636 and H.R. 3626, the Antitrust and Communications Reform Act of 1994. We heard testimony from more than 50 witnesses, representing such diverse fields as set-top box manufacturers, Federal- and State-level government agencies, the small cable industry, regional and rural telephone companies, the Communications Workers of America, academics, and members from the public interest arena.

I strongly believe that this legislation crafted out of these hearings represents a balanced and pragmatic response to these competing voices. While H.R. 3636 may not resolve each conflicting concern of all affected industries, there is no debating the fact that every American and every industry engaged in the business of communications stands to benefit from this bill. Let me explain how competition between these industries will evolve.

In passing legislation to promote competition between the cable and telephone industries, we are establishing a blueprint which will facilitate the development of a vast communications infrastructure, often referred to as the information superhighway. As part of this effort to promote competition to communications monopolies, information providers will be granted the right to compete with the local telephone company and to use its facilities. Such competitors, be they in the form of cable companies, independent phone companies, or others, will be allowed equal access to, and interconnection with, the facilities of the local phone company so that consumers are assured of the seamless transmission of telephone calls between carriers and between jurisdictions. Title I of the bill requires local telephone companies to provide nondiscriminatory access to their facilities and interconnection to their networks. It also directs the FCC to prescribe rules that will compensate local exchange carriers for interconnection and equal access, exempting rural telephone companies from these interconnection requirements. We include language which targets those telephone companies which serve low density areas and ensures that toll rates for rural customers remains comparable for urban customers.

This section gives the Commission the necessary powers to implement this legislation, which the Commission apparently lacks under current law.

On June 10, 1994, in *Bell Atlantic* v. *FCC*, the DC Circuit Court of Appeals severely curtailed the FCC's attempts to pave a procompetition and proconsumer information superhighway. The Court of Appeals struck down an FCC order compelling local telephone companies to open up their facilities to—or physically collocate with—other providers of telecommunications and information services.

The court suggested that an FCC order mandating physical collocation may amount to a taking. The fifth amendment dictates that no property shall be taken by the Government without the payment of reasonable and just compensation. Since compensation for takings are generally drawn from the Treasury coffers, which is the sole province of the legislature,

any congressionally unauthorized draw upon that resource is deemed invalid. The *Bell Atlantic* court pointed out that the Communications Act of 1934 does not grant the FCC explicit power to order taking of property, which, of course, requires compensation. Therefore, the physical collocation regulatory scheme required to spur competition and limit costs is not available to the FCC under its current Congressional grant of authority.

This lack of FCC authority has been anticipated by the committee in HR 3636. In language which predates the *Bell Atlantic* holding, the bill explicitly empowers the FCC to direct these carriers to allow other information providers to physically interconnect with their facilities. Such interconnection will provide consumers with a far more diverse range of telecommunications services and will spur competition to ensure that the costs of these services are reasonable. The bill also directs the FCC to establish regulations requiring just and reasonable compensation to the local telephone company providing these interconnection services.

The *Bell Atlantic* case highlights the necessity of this legislation and the immediacy of the problem. Without the congressional grants of authority which H.R. 3636 endows, the FCC lacks the tools needed to pave a high quality and affordable information superhighway.

H.R. 3636 creates a national communications policy whereby all States face the same regulatory regime in the provision of local telecommunications service. This is facilitated by prohibiting States or local governments from imposing regulations that would be contrary to the creation of competition in the local telephone loop. H.R. 3636 does, however, respect the States' important role in the oversight of intrastate telecommunications policy by allowing them to impose terms or conditions necessary to protect consumer protection laws, public safety concerns, and equitable rates.

H.R. 3636 also directs the FCC to develop rules to establish a Federal-State Joint Board to preserve and enhance universal service at just and reasonable rates. The goal of universal service has been at the core of communications policy since the passage of the Communications Act of 1934, and refers to the availability and accessibility of basic telephone service at reasonable rates, for all Americans. H.R. 3636 recognizes the concern that some consumers may want to simply subscribe to the same plain old telephone service or a comparable service to which they subscribe now. It is our intent to avoid advocating a particular or extravagant service; therefore, the bill directs the Board to examine varying services, the extent to which various telecommunications services are subscribed by customers, and to locate areas where denial of such services unfairly affects educational and economic opportunities of those customers.

The bill also directs the Joint Board to examine a number of issues as they formulate a plan to preserve and enhance universal service. Of course, the considerations outlined in paragraph (6) are not binding on the Commission or the States, since they have the ultimate decisionmaking authority. Instead, as part of the normal Federal-State Joint Board process, there will be recommendations that the Federal and State regulators can either accept or reject in whole or in part.

One of the issues the Joint Board will address is the issue of alternative or price regulations. It is worth noting that a majority of States choose some form of rate of return regulation for its citizens. In addition, by distinguishing alternative and price regulation from cost-based rate of return regulation, the committee recognizes that alternative regulation encompasses a variety of regulatory schemes, including pricing flexibility, incentive regulation and sharing of excess profits, all of which allow regulated telephone companies to price services and not return on costs.

The bill also directs the Commission to establish pricing flexibility regulations, which can serve as a transition from a regulated market to a competitive market, and can be used in proportion with the level of competition that exists in a particular market. The bill requires that these pricing flexibility regulations only can be used when a telephone company faces competition, and, most importantly, other forms of regulations are not needed to protect consumers. Thus, if the local exchange carrier faces sufficient competition so as to enable the Commission to conclude that competition will protect consumers from unjust or unreasonable rates, then the Commission may adopt a flexible pricing procedure.

H.R. 3636 directs the FCC to conduct a study on open platform service, taking into account existing facilities as well as new facilities with improved capacity. It is important to note that it is our intent to remain technologically neutral in our efforts to promote the deployment of advanced technologies and services.

Section 103 of H.R. 3636 contains provisions to survey the Nation's elementary and secondary schools and classrooms, public libraries, and health care institutions and report on the availability of advanced telecommunications services to these institutions.

The bill also empowers the FCC to define the circumstances under which a carrier may be required to interconnect its telecommunications network with educational institutions, health care institutions, and public libraries. Moreover, it directs the Commission to provide for the establishment of preferential rates for telecommunications services, including advanced services, provided to such institutions or the use of alternative mechanisms to enhance the availability of advanced services to these institutions.

I believe that there is perhaps no more important societal benefit to upgrading our Nation's information infrastructure than uplifting the hopes, dreams, and aspirations of millions of schoolchildren through increased access to information in America's elementary and secondary schools.

Getting phone jacks and/or cable links into every classroom won't be a quick fix for educational restructuring, but it is the sine qua non for allowing children to move beyond the physical barriers of the classroom to a host of potentially rich resources, mentors, and friends that can be accessed remotely. In my view, technology in the classroom is not meant to be a substitute for good teachers, but rather, it allows a teacher to shift from presenting talk to chalk to facilitating learning and encouraging a child's exploration of ideas by utilizing modern, information age tools.

I feel strongly that it is important to get these needed learning links established to schools because it can help mitigate against what I see is a widening gap between information-haves and have-nots. I believe that telecommunications technology can become a great equalizer in American education. Though a child may not have access to information age appliances in the home, may not have parents who subscribe to cable or own a computer, the school can help give them the tools they will need to compete for jobs in a knowledge-based economy. For this reason, I believe it is vitally important that we maximize the benefits that this legislation can bring to young children at school. I also want to include in the record at the end of my statement a letter from the Committee on Education and Labor reporting this section.

In addition, title I of H.R. 3636 addresses local authority over the rights-of-way, including language which asserts the right of city and local governments to maintain their rights-of-way. The municipalities stand to benefit greatly from the promotion of a communications infrastructure, and I believe that it is our responsibility to ensure that city and local governments are positioned to take advantage of the benefits. We include express language within this to ensure that a municipalities inherent authority to regulate their public rights-of-way is fully preserved within this legislation.

The bill also contains section 107 which amends the Pole Attachment Act. Under that amendment, a cable operator that did not offer telecommunications services would still be entitled to a pole attachment rate under the "just and reasonable" standard set forth under existing law. A cable operator that offered telecommunications services as well as cable service would be required to pay a pole attachment rate as established under the standard added to the Pole Attachment Act by the amendment.

Thus, this section does not require a cable operator to pay twice for a single pole attachment, if the operator is providing cable and telecommunications services. Moreover, a cable operator would only be required to pay for a single attachment—albeit under the new standard rather than the one set forth under current law—if the operator offers cable and telecommunications services through a single wire, or if the operator incorporates two wires at a single attachment, or if the operator overlashes a second wire for telecommunications services on the operator's existing cable plant. All of these are examples of a single pole attachment. If the operator can provide cable and telecommunications services using a single pole attachment, the operator would only be required to pay for a single attachment.

In fostering the goal of universal service, H.R. 3636 includes specific language designed to encourage the deployment of communications capabilities to underserved areas and populations. Title I of the legislation includes provisions which direct the FCC to examine the accessibility of telecommunications services in rural areas, and grants the Commission the ability to modify any of the open platform obligations if they prove economically or technically infeasible. Furthermore, the Commission is directed to promulgate regulations expressly designed to promote access to the network for disabled persons, small business and minority business interests, as well.

Title II of H.R. 3636 is designed to promote competition to the cable television industry by permitting telephone companies to compete in the provision of video programming and services. Under current law, telephone companies are prohibited from offering cable service with-

in their telephone service area. This restriction, established in 1970 Commission regulations and codified under the 1984 Cable Act, stems from the tradition of favoring policies which encourage a wide variety of ownership of media sources. We credit these ownership restrictions, in part, for facilitating the deployment of two wires to each home, an outcome which will help to promote more effective competition between and among telephone and cable companies.

When these initial restrictions were adopted in the 1970's, cable television was a nascent industry. The establishment and implementation of ownership rules was a necessary step to protect against encroaching telephone companies who, at the time, controlled the only wire to the home. Since that time, the cable industry has flourished, able to now claim 65 percent national penetration.

In a recent court challenge to the FCC's video dial-tone proceeding, a Federal district court in Virginia overturned the statutory cross-ownership provision in the 1984 Cable Act, a decision currently under appeal. A district court in Seattle, WA reached a similar result. Without legislation, therefore, the entrenched regional and local telephone networks may be allowed to deliver cable service before proper protections are put in place to ensure that the information superhighway develops in an open, competitive environment for the benefit of consumers as well as for a diversity of producers of programming and services. This is an important point, and must be considered as we debate passage of this legislation.

Title II establishes the guidelines through which telephone companies may engage in the business of video delivery. To advance the goal of unrestricted competition, H.R. 3636 allows telephone companies to offer multichannel video programming through a separate affiliate, and on a common carrier basis. The separate affiliate must construct a video platform capable of meeting all bona fide channel capacity and carriage demands of video programmers, and must include a suitable margin of unused channel capacity to accommodate a reasonable growth in demand. We include language which requires the affiliate to petition for approval with the FCC, thereby granting them the authority to require carriage and award damages in the event of a violation of these requirements.

In order to protect against media concentration, and to promote a more fully competitive marketplace, H.R. 3636 prohibits telephone companies from buying cable systems within their telephone service territory. We include limited exceptions to foster the expansion of competition within rural and underpopulated areas, and with small markets.

Any affiliate interested in offering programming on its video platform must also adhere to the same public interest and general franchise obligations mandated under the Cable Act of 1992. These rules oblige all competitors interested in providing video services to comply with all consumer protection provisions, program access requirements, rules governing the carriage of public, educational and governmental channels, and equal employment opportunity requirements.

This section also clarifies the right of a local government to collect fees from the video programming affiliate of a common carrier, or any other competitor wishing to offer multichannel video programming. Currently, franchise authorities only receive franchise fees from cable operators, a right granted to them in the Cable Act of 1984. If a telephone company or any other provider of video delivery chooses to compete with a cable operator in the delivery of video service, H.R. 3636 ensures that the telephone company and others will pay the exact same level of fees as cable operators.

This also applies to a telephone company's obligations to provide public, educational and governmental [PEG] access channels. H.R. 3636 requires telephone companies to meet the exact same level of PEG access as the local cable operator and as a cable operator's PEG obligations may increase in the course of franchise or other negotiations, a local telephone company's obligations should increase correspondingly.

This section also maps out the process through which a common carrier may obtain approval by the FCC to deliver video services. We include language which requires the FCC to ensure that video platforms comply with equal access and interconnection standards. The FCC is also instructed to ensure that restricts a common carrier from including, within the basic telephone rate, any expenses associated with the provision of video programming; and which prohibit cable operators from including in the cost of cable service any expenses associated with the provision of telephone service. We do not intend, in any way, for telephone ratepayers or cable subscribers to subsidize the independent business endeavors of their telephone or cable company.

H.R. 3636 also contains several provisions affecting television broadcasters that are designed to help broadcasters to compete more fully in developing the information superhighway. This includes a review of the ownership restrictions promulgated by the Commission over the years. While such a review is warranted, H.R. 3636 does not direct the Commission to undertake wholesale elimination of these rules which have done so much to ensure diversity and localism in our broadcast media. And while broadcasters should be able to compete fairly with other information providers H.R. 3636 does not adopt the relatively high concentrations of ownership in the cable television or the telephone industries as a standard for the Commission's review of these rules.

One of the areas of the bill that represents a significant new addition to communications policy is the section dealing with broadcaster spectrum flexibility. Above all, H.R. 3636 is careful to leave the Commission a great deal of room in which to determine many as yet unresolved issues. It does not preclude the Commission's previous efforts at developing standards for high definition television services that will represent a major improvement in the quality of television service, nor do we even mandate the current proposed allocation of spectrum. If the Commission chooses to proceed, however, we have set a series of important conditions on the allocation of new spectrum. For example, the terms ancillary and supplementary necessarily imply that such services are connected with and dependent on the main channel signal and should not predominate over this primary use of the spectrum. The bill also requires that ancillary and supplementary uses of broadcasters' spectrum be indivisible from its use for advanced television services. Thus, ancillary and supplementary uses must be transmitted in direct conjunction with the licensee's main channel signal and not offered on spectrum that is distinct or separated from the spectrum used for the main signal.

An essential component of the competitive endeavor of H.R. 3636 is to provide consumers with more choice. I believe that it is important to ensure that in the same way consumers will be provided with a variety of options between telecommunications providers and cable operators, they deserve to be offered a variety of standardized communications equipment, as well. I want to be sure that, similar to the equipment compatibility requirements of the Cable Act of 1992 which mandated standardized cable equipment, all consumers can benefit from a wide array of choices and suppliers at reasonable, market-driven cost. H.R. 3636 requires the FCC to commence an inquiry to examine the importance of open and accessible systems in interactive communications. This section, often referred to as the set-top box provision, instructs the commission to prescribe changes in its unbundling regulations to ensure that interactive communications devices are available from third party vendors and retail outlets. As my colleagues are aware, the set-top box could soon become the gateway through most, if not all, information enters the American home.

Most technological innovations in the area of information and telecommunications services have been developed without considering the needs of individuals with disabilities. The consequence has been that many of these innovations have been useless for individuals with disabilities. Indeed, the general failure to consider access for the disabled during the initial stages of telecommunications product and service development has actually led to a reduction in access for persons with disabilities.

The national information infrastructure promises to bring information, health care, banking, shopping, and other services within easy reach at home or in the office through information services and products. In keeping with the spirit of the Americans with Disabilities Act's goal of fully integrating people with disabilities into the mainstream of society, the current legislation is designed to ensure access for the disabled as new telecommunications technologies and services are developed. Our legislation will ensure that advances in network services deployed by local exchange carriers and advances in telecommunications equipment will be accessible to people with disabilities where it would not result in an undue economic burden or an adverse competitive impact.

In addition, H.R. 3636 directs the FCC to undertake inquiries for the provision of both closed captioning and video description services, and further directs the Commission to establish a schedule for the provision of closed captioning. The legislation aims to provide disabled Americans with access to advanced communications networks and the opportunities for independence, productivity, and integration that will result from these new services and products.

Section 206 directs the Commission to establish a schedule or timetable for the implementation of closed captioning. It requires that new programming be made accessible through captioning and previously produced programming be made accessible to the maximum extent possible. The legislation also pro-

video for exemptions from captioning requirements based on several factors. While much of prime time broadcast programming is now captioned, reports to the committee from the National Center for Law and Deafness indicate that less than 10 percent of basic cable programming is captioned. This section would require that all video programming be captioned where economically feasible.

During subcommittee consideration, questions were raised regarding the constitutionality of this section. I have attached a review of this issue from the Georgetown University Law Center which clearly finds that the section is constitutionally sound. I concur with the analysis which finds that the requirement is an incidental restriction subject to review under the standard set forth in United States versus O'Brien.

In directing the Commission to establish a schedule for the provision of closed captioning, the committee intends that programming be made accessible to the 24 million Americans who are hearing impaired where it would not be unduly burdensome to the provider of the programming. The committee does not intend that programming not be aired due to the requirement for captioning. However, the committee has stated its clear goal that access for the disabled be considered and pursued at the outset of the development of new products and services.

This provision is consistent with the first amendment because it is content neutral, and it is narrowly tailored to serve a compelling governmental interest. That interest is to make communications available, as far as possible, to all the people of the United States.

As more information essential to functioning in society moves onto advanced communications networks, it is critical that all citizens have access to this information. Many new services and products will be available over communications networks in video form, including health care services, library resources, educational information, financial and governmental data. Access to vital governmental information carried on these networks is critical to an informed electorate. Much of this information is necessary to full participation in work, school, and all aspects of life. As this information begins to be provided in video form, it is the goal of the committee that the 24 million Americans who are hearing impaired have full access to these products and services.

H.R. 3636 strives to ensure that public broadcasters are also guaranteed a strong position in the development of the information superhighway. Public broadcasters, in my opinion, should be heralded as a preeminent example of innovative and responsible news media, fulfilling a critical role by providing quality programming and important community service to all facets of American society. They have been in the forefront of numerous technological innovations and have spearheaded a variety of educational projects that have benefited all Americans. In this tradition, I strongly believe that public broadcasters will continue to play a crucial role in the development of the national communications infrastructure. The language we have included in the legislation recognizes the limited resources available to this community, and requires the FCC to prescribe regulations to reserve appropriate capacity for the public at preferential rates on the video platform.

Title III of this bill is designed to encourage economic opportunities for business enterprises owned by minorities and women. It requires each telecommunications provider interested in offering video services to submit to the FCC a plan which outlines procurement proposals from businesses owned by women and minorities.

Title IV authorizes appropriations for the FCC to fulfill its obligations under the National Communications Competition and Information Infrastructure Act of 1994.

In closing, I would like to extend my deepest gratitude to my fellow colleagues, JACK FIELDS, and Representatives BOUCHER, OXLEY, RALPH HALL, RICK LEHMAN, JOE BARTON, and other colleagues who helped craft a solid piece of legislation. This bill has become a model of consensus politics, and I thank each one of you for your contributions. I would also like to thank the staff on the subcommittee, Gerry Waldron, David Moulton, David Zesiger, Colin Crowell, Mark Horan, Kristan Van Hook, Karen Colannino, Steven Popeo, and Winnie Loeffler of my staff, Mike Regan and Cathy Reid, Gail Giblin, and Christy Strawman of JACK FIELDS' office who, together, worked many hard hours to develop the legislation we will vote on today.

I urge you to support this H.R. 3636 and I yield back the balance of my time.

GEORGETOWN UNIVERSITY LAW CENTER,
Washington, DC, June 8, 1994.

Hon. EDWARD J. MARKEY,
Chairman, Subcommittee on Telecommunications and Finance, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE MARKEY: As you know, Section 206 of H.R. 3636, The National Communications Competition and Information Infrastructure Act of 1994, requires the Federal Communications Commission to conduct an inquiry to determine the extent to which video programming is closed captioned and to ascertain other information relevant to closed captioning. §206(a). It then directs the FCC to adopt regulations to ensure that video programming produced after the effective date is fully accessible through closed captioning and to maximize access to video programming produced prior to the effective date. §206(b). The statute also provides for exemptions to the captioning requirement where the provision of captioning would be unduly burdensome to the provider or owner of the programming. §206(d).

The constitutionality of these provisions has been questioned by the Media Institute. See Letter of The Media Institute to Rep. Moorhead, March 11, 1994 ("Media Institute Letter"); The ACLU has also raised some concerns about these provisions. See Letter of ACLU to Rep. Richardson, March 15, 1994 ("ACLU Letter"). The ACLU acknowledges that the closed captioning requirement is merely an "incidental restriction" subject to intermediate review under *United States* v. *O'Brien*, 391 U.S. 367 (1968). It believes that the outcome of such review is unclear. ACLU Letter at 4–5. The Media Institute, however, asserts that Section 206 is content-based, and thus would be subject to strict scrutiny. Media Institute Letter at 3. Both the ACLU and Media Institute letters express concern that the statute invests unconstitutionally broad discretion with the FCC. *Id.* at 5; ACLU Letter at 5.

We have carefully studied these contentions and concluded that the closed captioning requirement itself is constitutional and that the statute gives constitutionally adequate guidance to the FCC for its implementation.

Let us observe at the outset, that if Section 206 were to be challenged on First Amendment grounds, the challengers would face two threshold obstacles. First, the canons of statutory construction direct that a statute must be construed, if fairly possible, to avoid the conclusion that it is unconstitutional. See *Rust* v. *Sullivan*, 111 S.Ct. 1759, 1771 (1991) and cases cited therein. Second, a facial challenge is "the most difficult challenge to mount successfully since the challenger must establish that no set of circumstances exists under which the Act would be valid." *Id.* at 1767, quoting *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). We do not believe that such a showing could be made here.

Were someone to challenge Section 206 as violating the First Amendment, the courts would undoubtedly find that Section 206 is a content-neutral regulation subject to intermediate scrutiny under the *O'Brien* test. Section 206 makes no distinctions on the basis of content. Indeed, the only distinction made is between programming produced before and after the effective date of the statute. Moreover, the criteria for exemptions involve economic factors, not content. Additionally, closed captioning does not require the creation of new and different content; it merely requires that the already produced verbal content be put in a form accessible to persons with impaired hearing.

Nor, should Section 206 be subject to strict scrutiny because it "forces" speech. Relying on cases such as *Wooley* v. *Maynard*, 430 U.S. 705, 714 (1977), *Miami Herald Pub. Co.* v. *Tornillo*, 418 U.S. 241 (1974), and *Pacific Gas & Electric Co.* v. *Public Utilities Comm'n*, 475 U.S. 1, 9 (1986) (*PG&E*), the Media Institute and ACLU argue that Section 206 requires unconstitutional forced speech. Media Institute Letter at 1–3; ACLU Letter at 2–3. However, these cases involved situations which imposed burdens on speech, in contrast to Section 206.

In *Wooley* v. *Maynard*, the Court found that a state may not constitutionally compel an individual to display the slogan "Live Free or Die" on his license plate if he found it morally objectionable. 430 U.S. at 714–15. In *Miami Herald*, the Court struck down a right of reply statute that required newspapers that criticized a political candidate to publish a reply. 418 U.S. at 256–58. In *PG&E*, the Court found it unconstitutional to force a utility company to include in its billing envelopes the speech of a group with whom the company disagrees. 475 U.S. at 9–16.

What each of these cases have in common is that they involved a regulation that compelled a speaker to make utterances with which he or she disagreed. Section 206, however, does not require anyone to say something that he or she disagrees with. It merely requires video programmers to make the speech they freely chose to make available for public distribution accessible to persons with impaired hearing.

Nor, does *Riley* v. *Nat'l Federation of the Blind*, 487 U.S. 781, 797 (1988) provide any support for ACLU's position. In *Riley*, the Court found it unconstitutional to require professional fundraisers to disclose the percentage of charitable contributions actually turned over to charity because such "compelled disclosure will almost certainly hamper the legitimate efforts of professional fundraisers to raise money for the charities they represent" and discriminates against small charities which must usually rely on professional fundraisers. *Id.* at 799. Here, unlike in *Riley*, however, where the provision of captioning would be unduly burdensome, an exemption is available.

Thus, Section 206 is clearly content neutral and should be evaluated under the *O'Brien* test. Under this test, content neutral

regulations will be upheld if they are "narrowly tailored" to serve an "important or substantial governmental interest." 391 U.S. at 377.

Here, closed captioning furthers the government's long standing interest as expressed in the FCC's universal service obligation: to make communications "available, so far as possible, to all the people of the United States." Communications Act of 1934, §1, 47 U.S.C. §151. Congress has furthered this interest by passing numerous pieces of legislation designed to increase the access of persons with impaired hearing to communications. See, e.g., Telecommunications for the Disabled Act of 1982, P.L. 97-410, codified at 47 U.S.C. §610, as amended (1988) (insuring reasonable access to telephone service by persons with impaired hearing); Hearing Aid Compatibility Act of 1988, P.L 100-394, codified at 47 U.S.C. §610 (1988) (finding that hearing impaired persons should have equal access to the national telecommunications network to the fullest extent possible and requiring the FCC to enact rules to require that telephones manufactured or imported after August 1989 be hearing aid compatible); Americans with Disabilities Act of 1990, 47 U.S.C. §2215, *et seq.* (requiring telephone companies to provide relay services to enable individuals who use TDDs to communicate with anyone, at any time, over the telephone); Television Decoder Circuitry Act of 1990, 47 U.S.C. §§303(u), 330(b) (1991) (requiring all television sets with screens 13 inches or larger which are manufactured or imported after July 1, 1993 to be capable of displaying closed captioned television programs).

In the Television Decoder Circuitry Act of 1990, Congress specifically found that "closed captioned television transmissions have made it possible for thousands of deaf and hearing-impaired people to gain access to the television medium, thus significantly improving the quality of their lives" and that "closed-captioned television will provide access to information, entertainment and a greater understanding of our Nation and the world to over 24,000,000 people in the United States who are deaf or hearing impaired. P.L. Law 101-431, §§2(2) & 2(3). Now that more television sets are able to display closed-captioned programming, requiring video programming to be closed-captioned will likewise further these important government interests.

Closed captioning benefits not just people who are deaf or hard of hearing, but also children learning to read, persons for whom English is a second language, and adults who are illiterate or remedial readers. See H.R. Rep. No. 767, 101st Cong., 2d Sess. 5-6; S. Rep. 398, 101st Sess., 2d Sess. 1-2. It is estimated that nearly 100 million Americans can benefit from television captioning. Thus, there can be no question that Section 206 furthers a substantial governmental purpose.

Furthermore, Section 206 is narrowly tailored to achieve those government purposes. To be narrowly tailored, the regulation need not be the least restrictive; the government need only show that its interest would be achieved less effectively absent the regulation. *Ward* v. *Rock Against Racism*, 491 U.S. at 799-800 (1989). Here, it is clear that the governmental purpose of making programming accessible would not be achieved without the requirements of Section 206. While some types of video programming are already captioned (approximately 75 percent of television network programming is closed captioned), the vast majority of video programming (especially programming available on basic cable channels) is not and is unlikely to be captioned in the foreseeable future absent the proposed legislation. Moreover, exemptions are available to provide relief where closed captioning will be unnecessarily burdensome.

Nor is Section 206 constitutionally suspect because it gives the FCC overly broad discretion to grant exemptions. Media Institute Letter at 5; ACLU Letter at 5. Citing *Lakewood* v. *Plain Dealer Publishing Co.*, 486 U.S. 750, 757 (1988), the Media Institute claims that the Section 206 would vest unbridled discretion with the FCC, permitting it to exempt from Section 206's captioning requirement "the programming it favors and to deny exemptions to programming it disfavors." Media Institute Letter at 5.

This reasoning is surely backwards. First, it erroneously assumes the FCC is entitled to exercise its discretion in an unconstitutional way. Second, it makes the unfounded assumption that the FCC actually favors certain programming. Third, even if we were to accept this peculiar notion, would not the FCC want that favored programming to receive wider distribution, i.e., to require captioning, rather than the other way around?

But fortunately, Section 206 does not give unbridled discretion to the FCC. Indeed, unlike the statute in *Lakewood*, which contained no explicit limits on the mayor's discretion to grant or deny permits for news racks, Section 206 provides explicit criteria for the FCC to use in considering exemptions. First, the FCC may by regulation exempt "programs, classes of programs or services" if it finds that closed captioning would be *"economically burdensome* to the provider or owner of such programming." §206(d)(1) (emphasis added). Second, a video programming provider or owner may petition the Commission for an exemption, and the Commission may grant it upon a showing that adhering to closed captioning requirements would result in an "undue burden." §206(d)(3). "Undue burden" is defined as "significant difficulty or expense." §206(d). In determining whether compliance would entail undue burden, the FCC is directed to consider specific factors: the nature and cost of the closed captions for the programming; the impact on the operation of the provider or program owner; the financial resources of the provider or program owner; and the type of operations of the provider or program owner.

Section 206's definition of "undue burden" is patterned after use of this term in the Americans With Disabilities Act ("ADA"). See, e.g., ADA §301(b)(2)(A)(iii). "Undue burden" in the ADA, in turn, was patterned after the term "undue hardship," as that term has been used in the implementation of the Rehabilitation Act since 1973. S. Rep. No. 116, 101st Cong. 1st Sess. at 63 & 35-36. Agency interpretations of both of these terms—"undue burden" and "undue hardship"—have consistently relied on economic criteria, allowing waivers only after consideration of the cost to an applicant of a particular accommodation and the relative resources of the applicant. Id. at 36. Moreover, Department of Justice regulations implementing the ADA also define "undue burden" to mean "significant difficulty or expense." 28 C.F.R. §36.104. The regulations list five factors to be considered in determining whether an action would result in "undue burden." These factors closely track the factors listed in Section 206(d). Thus, the term "undue burden" in Section 206 brings with it a long history of being a well-defined, content-neutral standard for granting exemptions from captioning and other requirements.

By no stretch of the imagination can one conclude that Section 206 leaves the FCC free to grant waivers on the basis of whether or not it favors particular programming. Rather it limits the relevant factors for FCC consideration to the costs of providing access and the ability of the affected entity to afford those costs. It clearly meets the requirement established in *Grayned* v. *City of Rockford*, 408 U.S. 104, 108 (1972), that laws affecting free speech provide explicit standards for those who apply them.

The ACLU understands that undue burden is "defined largely on the basis of its financial or other impact on the service provider." ACLU Letter at 5. Specifically, it expresses the concern that "a smaller provider might be exempted for programming that is intended to reach a wider audience than a larger, more well-heeled provider who has made a conscious effort to reach a specific, more narrow audience." *Id.* It suggests that discrimination between speakers merely on the basis of financial ability is constitutionally suspect because it "favors certain classes of speakers over others." *Id.* citing *Home Box Office v. FCC*, 567 F.2d 9, 48 (D.C. Cir.) (per curiam), *cert. denied*, 434 U.S. 829 (1977) ("*HBO*").

ACLU's reasoning, however, is both legally and factually flawed. Whether the intended audience is broad or narrow is irrelevant—in either case, it will contain viewers who would benefit from closed captioning. While the size of the provider may be relevant to its ability to pay for the cost of captioning, there is no reason to assume that content provided by smaller providers is somehow distinct from content provider by wealthier providers. In *HBO*, the D.C. Circuit suggested that regulations favoring certain classes of speakers were constitutionally suspect only where the Government's intent was to curtail expression. 567 F.2d at 47-48. Here, there is no constitutional problem because there is no basis to believe that financial resources is somehow being utilized as a proxy for certain types of expression that the government wishes to curtail. Rather, the government's purpose is merely to make as much programming as possible available to as large an audience as possible. And as the Supreme Court has observed "a regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward* v. *Rock Against Racism*, 491 U.S. at 791.

ACLU next expresses concern that the FCC might exempt news programming from the captioning requirement because there would be no time to incorporate closed captioning into breaking news stories. In fact, this assumption is wrong. The ACLU is apparently unfamiliar with "real time captioning" in which captions are simultaneously created and transmitted, using stenotypists and specialized computer software. Real time captioning is already being used by all national news programs and almost 200 local news programs.

Finally, the fact that Section 206 vests some discretion in the FCC does not make the provision unconstitutional. In responding to a similar challenge in *Ward*, the Supreme Court observed: "While these standards are undoubtedly flexible, and the officials implementing them will exercise considerable discretion, perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity." 491 U.S. at 794. It is appropriate for Congress to assume that the FCC will implement Section 206 in a constitutional manner. It is a long-standing and well-accepted practice of Congress to leave the applications of such standards to administrative agencies. Indeed, Congress has routinely delegated to the FCC the responsibility to adopt implementing regulations and to grant exemptions with much more potential to influence content than Section 206. See, e.g., Communications Act of 1934, a amended, §315(a), 47 U.S.C. §315(a) (FCC to determine which programs are bona fide news programs exempt

from equal opportunities for political candidates); *Id.* §223(b)(3) (directing FCC to prescribe procedures by regulation for restricting access to indecent communications that will constitute a defense to prosecution for violation of law prohibiting indecent communications by telephone); *Id.* §532(c)(4)(B) (directing the FCC to establish rules for determining the maximum rates, terms and conditions under which unaffiliated programmers can lease channels on cable systems).

In the unlikely event that the FCC were to interpret or apply Section 206 in an unconstitutional manner, judicial review would be available at that time. However, even if the agency's interpretation or application of a provision were found to be unconstitutional, this would not necessarily mean that the statute itself was unconstitutional. See *Rust v. Sullivan*, 111 S. Ct. at 1771.

In sum, the concerns that Section 206 violates the First Amendment are unfounded. The requirement that the FCC adopt regulations to require closed captioning is a content-neutral regulation narrowly tailored to serve a substantial government interest. It would easily pass scrutiny under the *O'Brien* test, and given the substantial nature of the governmental interest and lack of alternative means, would even likely survive strict scrutiny. Moreover, Section 206 is not vague, and provides adequate standards to believe that the FCC will implement it in a constitutional manner.

We appreciate the opportunity of providing this analysis to you and hope that it will be helpful.

Sincerely,

ANGELA J. CAMPBELL,
Associate Professor of Law, Georgetown University Law Center.

STEVEN H. SHIFFRIN,
Professor of Law, Cornell University.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, March 15, 1994.

Representative JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce.

DEAR MR. CHAIRMAN: We understand the Committee on Energy and Commerce expects to mark up H.R. 3636, the National Communications and Information Infrastructure Act of 1993, this week. We are pleased that section 103 of the bill proposes to provide preferential telephone rates to elementary and secondary schools as well as to public libraries as a part of the overhauling of our national telecommunications policy. If enacted, these provisions could make access to the national superhighway affordable for all students and users of public libraries, regardless of a community's wealth or geographic location. All too often schools and libraries, the fundamental underpinnings of our communities, are left on the sidelines of the technological revolution. The bill helps to correct this problem. The preferential rate provisions of H.R. 3636 could complement several technology-related programs incorporated into H.R. 6, a bill to reauthorize the Elementary and Secondary Education Act, which is presently pending before the House.

We laud your efforts, and that of Chairman Markey, on behalf of schools and libraries. We would urge, however, that you also consider extending the preferential rates to "libraries which the public may access", rather than the more narrowly framed wording of the bill, "public libraries", and to educational institutions at all levels. We are concerned, for example, that there are many postsecondary education institutions, including two-year community colleges and many others which will simply not be able to afford full participation in the network, unless basic telephone rates are sufficiently low. At the very least, we would urge that there be a feasibility study by the Federal Communications Commission to expand preferential rates for these other categories.

We would appreciate inclusion of this letter in your Committee's report on H.R. 3636, to recognize the Education and Labor's jurisdictional interest in H.R. 3636.

Sincerely,

WILLIAM D. FORD,
Chairman.
WILLIAM F. GOODLING,
Ranking Republican.

□ 1340

Mr. Speaker, I reserve the balance of my time.

Mr. FIELDS of Texas. Mr. Speaker, I yield myself 5 minutes.

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Speaker, I rise in strong support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1993. This legislation, like its companion measure H.R. 3626, which we have just considered, is more than just a telecommunications reform bill, it is legislation that will impact the future of this country—it will foster economic growth, create new jobs in a high tech industry, and spur greater U.S. competitiveness in the global telecommunications market.

Unquestionably the rapid changes in the telecommunications world will revolutionize the way all Americans live their lives. What we are doing today is simply saying that there should be a road map—some national principles—that guide the manner in which that revolution occurs.

Presently we have no single guiding light on telecommunications policy. We have a patchwork of court decisions, consent decrees, a 60-year-old Federal statute based on railroad laws, and similar State utility laws that, taken in toto, dampens incentives and opportunities for U.S. telecommunications companies to build the information superhighway. Today we begin the process of setting policy on course toward building that highway to the future.

What we recognize today is that all telecommunications are converging, the traditional bright lines that separated telephone companies from cable companies from broadcast companies no longer exist or make any sense. Recognizing this fact, Congress passed legislation last year to reform the world of wireless communications, to treat mobile, paging and other wireless services in the same manner when they are providing similar services. Today we are engaged in a similar process for the wired world: telephone companies providing cable and cable and others providing local telephone service.

H.R. 3636 recognizes that the traditional monopolies of cable and local telephone service make no sense any longer. This infrastructure bill will tear down the legal and regulatory barriers that have perpetuated those monopolies and allow competition to flourish. Healthy competition in these markets is the best guarantor we can have that the telecommunications products and services of the future will be brought as swiftly and fairly priced to all Americans as possible.

There has been a significant amount of discussion throughout this process about creating the proverbial level playing field for all industry participants, and we have endeavored to ensure that the field is level. But as Members of Congress, our first duty is to create a level playing field for our constituents, the American public. As we enter the information age, our first responsibility, is to ensure that all Americans—regardless of their demographics, regardless of their economic status, and regardless of their racial or ethnic make-up, have equal access to the information age. The overarching, and most important, objective of this bill is to ensure that this level playing field exists.

Therefore, I strongly urge my colleagues to join me in supporting H.R. 3636. I want to comment my good friend the subcommittee chairman, Mr. MARKEY, for his leadership and vision in bringing us to this historic day. I might add, we have had 40 meetings in negotiating this legislation. I want to thank Messers. BOUCHER and OXLEY for their invaluable contributions to this effort as well as the many other committee members who contributed to producing this critically important legislation. Finally, I want to thank the full committee chairman and ranking member, Messrs. DINGELL and MOORHEAD, for their hard work and persistence in bringing this measure before the House.

Mr. Speaker, I want to commend my good friend, the gentleman from Massachusetts [Mr. MARKEY], chairman of the subcommittee. As he has mentioned, we have had 2 years of meetings. He told me just a moment ago that we have had 40 personal meetings. I appreciate the fact that this piece of legislation has been handled in a bipartisan way and that we have had this level of discussion.

Mr. Speaker, I want to commend the chairman for his leadership and his vision in this important matter. It brings us to this historic day. I also want to thank the gentleman from Virginia [Mr. BOUCHER] and the gentleman from Ohio [Mr. OXLEY] for their invaluable contributions to this effort, as well as many of our other subcommittee members, in producing what I think is a critical and a bipartisan piece of legislation.

Finally, Mr. Speaker, I want to thank the gentleman from Michigan [Mr. DINGELL], the chairman, for the atmosphere he has provided on working on this, again in a bipartisan manner. When people criticize Congress, they cannot criticize the efforts of the Com-

mittee on Energy and Commerce, particularly on this piece of legislation.

Mr. Speaker, I also want to thank the ranking minority member, the gentleman from California [Mr. MOORHEAD] for his leadership in again providing us with the atmosphere in which to negotiate a very delicate balance with a number of competing interests, and I hold this out to my colleagues as one of the best pieces of legislation that will come before this House this year, and thus far in my career, a piece of legislation that all of us should be proud of and support.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. DINGELL], chairman of the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, I thank my dear friend, the gentleman from Massachusetts, for yielding me this time.

Mr. Speaker, I rise to commend the gentleman from Massachusetts [Mr. MARKEY], chairman of the subcommittee, the distinguished gentleman from Texas [Mr. FIELDS], the ranking minority member of the subcommittee, the ranking minority member of the full committee, the gentleman from California [Mr. MOORHEAD], the gentleman from Ohio [Mr. OXLEY], and a large number of other Members who have worked very hard.

Mr. Speaker, complaint was made that this legislation and the prior legislation, H.R. 3626, are going through too fast. The hard fact is that we are getting this legislation through in something like 80 minutes after about 30 years of hard work in getting it in order. The effort to present this legislation to the floor has been bipartisan in its entirety.

The members of the full committee, the subcommittee, and of the leadership of both of those institutions deserve great credit for the hard work, for the effective, capable, dedicated, and decent way in which this legislation has been assembled.

Mr. Speaker, the country deserves to know of the work of these wonderful men and women, and also deserves to have the opportunity to express the thanks that they properly should feel for milestone legislation which is going to restructure the entirety of American telecommunications for the benefit of all the people. This is a day which we should celebrate, and I commend my colleagues. I thank them for the hard work which they have done.

Mr. FIELDS of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. MOORHEAD], our ranking minority member.

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

Mr. MOORHEAD. Mr. Speaker, I rise in strong support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994. This legislation is an important step in bringing a 60-year-old communications statute—the Communications Act of 1934—into the 21st century.

H.R. 3636 provides the statutory framework for the provision of new and advanced telecommunications services to the American people. In short, it lays the groundwork for the much talked-about information superhighway.

The bill accomplishes this goal by promoting competition and deregulating where appropriate. First, H.R. 3636 opens up local exchange telephone service to competition.

By opening up the local loop, H.R. 3636 brings an end to monopolies in the local telephone market. Consistent with this action, the bill also declares an end to monopoly regulation by mandating the abolition of rate-of-return regulation for local telephone service.

H.R. 3636 also achieves competition in the video marketplace by permitting telephone companies to provide video programming within their service areas. The bill also encourages the development of a vibrant video programming market in other ways. For example, the bill gives broadcasters the flexibility to use their assigned spectrum in a variety of ways.

Finally, the bill encourages access to the information superhighway to all program providers on reasonable terms and conditions. The bill also seeks to promote the provision of advanced telecommunications services to all Americans seeking such services.

Mr. Speaker, this bill is an example of the kind of legislation the American people expect us to pass. From the very start, the complicated issues underlying this bill were addressed in a bipartisan and orderly manner. The subcommittee on Telecommunications and Finance, under the leadership of Chairman MARKEY and Congressman FIELDS held seven hearings, receiving testimony from over 50 witnesses. The subcommittee and full committee examined over 200 amendments.

Through bipartisan cooperation, this bill was reported unanimously out of the energy and commerce committee on a 44-to-0 vote. This vote reflects the hard work put in by Chairman DINGELL, Chairman MARKEY, Congressmen FIELDS, OXLEY, BOUCHER, and others in drafting the bill and perfecting it during the committee process.

Mr. Speaker, for all these reasons, I urge my colleagues to join me in supporting H.R. 3636.

□ 1350

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. BOUCHER].

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

Mr. BOUCHER. Mr. Speaker, with the passage of these bills we will enact the largest reform in telecommunications law and policy in the 60-year history of the 1934 Communications Act.

One of our goals is to bring competition to industries that are now monopolies.

Telephone companies will be free to offer cable TV inside their telephone service territories.

Cable companies and others will be granted the right to offer local telephone service, bringing to consumers the same choices in local telephone services that they have today with long distance.

The Brooks-Dingell measure will make noncompetitive the markets for more long distance and the manufacture of equipment.

This new competition will produce tangible benefits:

Consumers of Cable TV and telephone services will receive the benefit of better prices set by a competitive market.

The nation will receive the benefit of a vastly improved network, as telephone and cable companies deploy fiber optic lines, other broadband technology and more capable switches to facilities the simultaneous offering of voice, television and data over the same lines.

And this is the means by which we will obtain deployment in the nation of the world's most modern network. The national information infrastucture will be deployed not through the expenditure of government funds but by giving private companies the business reasons to put new networks in place.

The legislation we will pass today provides those business reasons. It brings down the barriers that have preserved monolopies and inhibited competition.

The result will be an avalanche of new business investment, as communications companies install new networking technology to bring entertainment, information, and new business opportunities to homes and offices throughout the Nation.

Another of our goals is to preserve the concept of universal service, the structure of which is threatened as competition comes to local telephone service. By imposing a proportionate universal since funding responsibility on all local telephone competitors, we sustain for the future a proud American tradition in which 96% of our citizens have local telephone service.

A third important goal is to create a fair and level arena for all communications companies. We are freeing television stations to offer voice and data as well as TV services. We encourage wireless technology as a full participant in the provision of multimedia services, and we create a fair pale attachment rate equally applicable to all competitors.

I have been honored to work with the members of the Telecommunications subcommittee in creating these reforms. I particularly want to commend the gentleman from Mars, [Mr. MARKEY] for his leadership, guidance, and persistence. It is not easy to create a broad consensus involving issues of this complexity, but he has presided over a highly constructive process that has achieved that goal.

I also want to commend my friends JACK FIELDS and MIKE OXLEY for their excellent work. The superb bi-partisan cooperation which they have provided is yet another reason that the Energy and Commerce Committee is so successful in crafting for reaching reforms that come to the floor without controversy.

For 3 years, Mr. OXLEY and I have worked to remove the barriers to competition in the cable TV industry, and as we pass the bill which accomplishes that result, I thank him for his splendid cooperation.

Mr. Speaker, I am pleased to cosponsor these constructive reforms and to urge their passage by the House.

They will create millions of jobs, stimulate billions of dollars of investment, and bring to the United States the world's finest communications network.

Mr. MARKEY. Mr. Speaker, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Speaker, section 107 of H.R. 3636 amends the Pole Amendment Act. (47 U.S.C. 224). This amendment is intended to ensure that all attachments bear an equitable share of the costs of a pole or conduit. In its current form, however, the formula mandated by section 107 requires more than a proportionate share of the costs from those who are not owners or co-owners of the poles and conduits. I would like the agreement of the ranking minority member of the Telecommunications Subcommittee and the gentleman from Virginia to work with me to fashion an amendment that reflects this distinction.

Mr. FIELDS of Texas. Mr. Speaker, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Speaker, I would be pleased to work with the chairman. As currently written, the pole attachment language of H.R. 3636 could triple or quintuple the pole attachment fees paid by cable operators when they begin to offer telecommunications services. Such a result is not only inequitable, it will discourage operators from constructing and operating telecommunications facilities. I am confident we can devise a means of preventing this outcome while ensuring that the owners of poles and conduits are adequately compensated for use of their facilities.

Mr. BOUCHER. Mr. Speaker, I would say to the gentleman from Massachusetts and the gentleman from Texas that I am pleased to join with them in revisiting the pole attachment provisions. While I am reserving judgment as to the substance of the matter, I will be pleased to work with them in crafting some modification of the current provisions.

Mr. FIELDS of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. OXLEY], a member who has worked very hard on this particular piece of legislation.

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

Mr. OXLEY. Mr. Speaker, I rise today in strong support of the National Communications Competition and Infrastructure Act of 1994. As Members know, this legislation will accelerate the construction of the information superhighway. It will promote competition in local telephone by allowing cable companies to provide telephone service, and will promote competition in the cable industry by enabling telephone companies to offer video services. I want to praise Chairman MARKEY, Congressman FIELDS, and every member of our Energy and Commerce Subcommittee on Telecommunications and Finance for the long hours of work they put into crafting this legislation.

What makes this significant legislation possible is the clear consensus which has emerged in favor of competition, deregulation, and entrepreneurialism. The approach that this measure takes toward the development of the telecommunications supersystem is one that I have endorsed for years. By lifting market-entry prohibitions and reducing government regulation we will ensure that American consumers are served with the most advanced telecommunications system in the world. Equally important, I am confident that by providing competition in the video service industry, this measure will give consumers the cable rate relief that the 1992 cable act did not.

I would like to add that while advancing private competition and deregulation are traditionally Republican themes, I was joined in my early efforts to promote this approach by a clear-thinking Demoract, the gentleman from Virginia, [Mr. BOUCHER].

Mr. Speaker, what this measure seeks to do is end the virtual monopolies that exist in the video programming and the local telephone markets. It is revolutionary legislation, and I urge all my colleagues to support it.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma [Mr. SYNAR].

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

Mr. SYNAR. Mr. Speaker, I rise today in support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994.

This bill, and its companion, H.R. 3626, represents the critical push we need to bring jobs, innovative technology, and services to Oklahoma and the Nation well into the next century. The growth and implementation of the national superhighway bodes well for the citizens of my State, where we expect to gain a healthy share of the 3.6 million newly created high-skill, high-wage jobs, a broad selection of consumer, telemedicine, and educational services for rural areas, and the ability to export Oklahoma-made goods to world markets in the future.

The National Communications Competition and Information Infrastructure Act builds upon principles that I have promoted since we began hearings on the bill. These essential elements include a commitment to universal service for all Americans, whether rural or urban, development of networks that are open and reliable, proper cost-allocation between consumers and competitors, and effective FCC enforcement.

The importance of giving all Americans access to the information highway, and the host of educational, health, economic, and quality of life benefits it will provide, cannot be understated. As a nation, and a government, we must not bestow the benefits of the information highways on some, and deny others, just because they live in out of the way places or in poor urban neighborhoods. Our work on this issue must be done with great care and compassion, for real social disruption could result if we do our job poorly.

In listening to the debate over how to provide and upgrade universal service in a rapidly changing telecommunications environment, I developed three core principles for evaluating the proposals before us. First, to echo title I of the 1934 communications act, all the people of the United States must get service at a reasonable charge. Second, the quality of the service must be available to all on equal basis, regardless of geographic location or economic station. And third, the service must be provided in a prompt fashion to all citizens—no area of the country should be left off the information highway for any length of time.

The bill before us today is a good starting point for addressing the principles I have raised. On several key issues, however, such as the definition and the funding of universal service, the bill gives basic authority for these decisions to a Federal-State Joint Board. I have some concerns about delegating such broad authority for such essential issues to this Board, and I will be looking forward to overseeing the progress in these areas.

Along these lines, I am pleased to note that the bill contains specific provisions to ensure rural areas are not left behind as the private sector moves forward to deploy new technology to consumers. As drafted, the exemptions allow the Commission to apply initially equal access and interconnection requirements specifically to rural providers only when they would not be unduly burdensome and economically unfeasible. We recognize in this legislation something that rural telephone and cable consumers in Oklahoma have known for a long time: that new entrants to a market often face tremendous obstacles if they must compete against an entrenched service provider. The goal of this rural package is to encourage competition in these markets

so that residents get new services quickly and at lower prices.

It is important to remember that the future cost of our national infrastructure should not be borne by rate payers who remain captive to regulated industries. People who want only a Chevy should not have to pay the cost of a Cadillac. Certainly, consumers with new demands for upscale, integrated services expect to bear the proper and equitable cost of such services if they select them. Moreover, providers that use the telecommunications network to reach their consumers should pay for all the direct costs such services incur, as well as a reasonable share of the joint and common costs of the network. The bottom line is this: as technology advances, we are clearly going to encounter a declining cost industry, and the appropriate savings from these efficiencies should be reflected in a consumer's phone bill.

We ensure this goal by providing specific language in the legislation prohibiting cross subsidization between a common carrier's telephone exchange service and a common carrier's other nonregulated activities and investments. Cross subsidization occurs when a telephone company uses revenues derived from captive ratepayers to subsidize the company's nonregulated business ventures. The effect of this practice is twofold: the cost of service to ratepayers increases and the telephone company's nonregulated business ventures receive a comparative competitive advantage over their rivals in those businesses.

However, it is difficult for regulators to properly enforce these cross-subsidy prohibitions without making sure a rigorous cost allocation scheme is in place. Unless, and until, the costs incurred by the telephone company are properly allocated between the regulated entity and the nonregulated entity any cross subsidization regulation cannot be effectively enforced. My amendment, offered and adopted in full committee, puts real teeth into the original cross-subsidy prohibition by including cost allocation language that empowers the FCC to audit telephone exchange providers to make sure that consumers are fairly charged for the services they receive.

Enforcement of any regulatory structure rests on the ability of the agency in charge to get the job done. That is why I also offered, and the full committee adopted, an amendment to ensure that the FCC can use its authority given under the 1993 budget act to collect fees from the industry it regulates and target them to augment the FCC's sorely understaffed auditing, rulemaking, and legislative review functions. The estimated cost for the FCC's implementation of H.R. 3636 is $44 million in 1995, and up to $30 million each year thereafter. This amendment will enable the Commission to get a head start on defraying its administrative costs upon enactment, so that taxpayers aren't solely responsible for bearing these expenses.

Finally, Mr. Speaker, we must remember that a locked door without a key cannot be opened and the opportunities inside cannot be enjoyed. Universal service, proper cost allocation, and effective enforcement are the keys to the information highway for all Americans. I look forward to reaching these goals as we move forward on final passage of the legislation in this Congress.

Mr. FIELDS of Texas. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. GUNDERSON].

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

Mr. GUNDERSON. Mr. Speaker, I rise in support of the bill and especially want to thank the committee for their protections for the deaf and the hard of hearing section that is included in the bill.

Mr. Speaker, I rise in support of H.R. 3636 and H.R. 3626, legislation which will establish new telecommunications policy for our Nation and help move our Nation forward into the 21st century. Congressmen DINGELL, BROOKS, FISH, MOORHEAD, and FIELDS are to be commended for their efforts to forge compromise legislation which will increase competition within the telecommunications industry and which will bring new goods and services to consumers across our country.

These bills contain necessary policy reforms that are required to bring our Nation's telecommunications policy up to date with both the changing technologies and the changing marketplace. Both the technologies and the marketplace have completely bypassed existing telecommunications policy to the detriment of our Nation's economy and to our constituents.

In addition, I note with particular interest the support of the disabled community for these measures. I commend the authors of this legislation for requiring that Bell Company manufactured equipment and advances in network services be accessible to people with disabilities as outlined in section 229 of H.R. 3626. Title IV of the Americans with Disabilities Act has made the voice telephone accessible to people who are deaf or hard of hearing through the establishment of telephone relay services. And H.R. 3636 assures that individuals who are deaf will enjoy more complete access to cable programming, as much more of it would be captioned. Gallaudet University's Mark Goldfarb and Dr. Margaret Pfanstiehl of Metropolitan Washington Bar testified that these access provisions are long overdue.

I agree and urge my colleague to support provisions that, like those in H.R. 3626 and H.R. 3636, provide deaf and blind Americans the equal access they deserve.

Mr. FIELDS of Texas. Mr. Speaker, I yield 1 minute to the gentleman from Illinois [Mr. HASTERT].

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

Mr. HASTERT. Mr. Speaker, as an original cosponsor of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994, I rise in support of this legislation. In a nutshell, this legislation has two major objectives: First, to open up the local telephone loop within 1 year to enable new entrants to compete for local exchange service with the incumbent telephone companies and, second, to permit cable and telephone companies to compete in each other's business.

This bill reflects not only good public policy, but also the commendable efforts of our colleagues Chairman MARKEY and ranking Republican member, Mr. FIELDS, to achieve what has been appropriately described by some as the "impossible dream."

As the legislative process proceeds, we need to remain vigilant to ensure that all industries will be able to fully compete with each other as quickly as possible and with the fewest regulatory constraints. Where regulation occurs, it should be equivalent regulation so that every player is required to be regulated in a similar manner as they strive to gain market share from the other. We should guarantee that asymmetrical treatment of new entrants in the marketplace is eliminated.

Finally, Mr. Speaker, I believe that America is standing on the brink of a new information age. At stake today is whether our constituents—individual consumers—are allowed to enjoy the fundamental benefits of enhanced choice and access. Accordingly, I urge my colleagues to vote "yes" on H.R. 3636.

□ 1400

Mr. MARKEY. Mr. Speaker, I yield 1½ minutes to the gentleman from New Mexico [Mr. RICHARDSON].

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

Mr. RICHARDSON. Mr. Speaker, today I rise in support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994. This comprehensive piece of legislation has been a long time in the making and it is rewarding to see it come to floor with such bipartisan support. I congratulate our colleagues on both sides of the isle for keeping their focus on the merits of this legislation. We are on the verge of entirely new industries and ways of communicating. H.R. 3636 points us in the right direction.

I am proud to have played a part in the evolution on this monumental legislation. The process that has brought this bill to the floor has been receptive to many important concerns. From universal service to public access, H.R. 3636 addresses the abundance of concerns relative to delivering telecommunications services. I am particularly pleased that H.R. 3636 addresses specific concerns with regard to rural areas, minorities, information redlining, programming access, and public, educational, and governmental access.

Rural issues are of great concern to me and I was pleased to support provisions to ensure universal service and

infrastructure sharing for rural telephone companies. A progressive universal service plan is necessary to ensure that all Americans have access to the information superhighway and I am hopeful that all New Mexicans and Americans will soon be the beneficiaries of competition in the local telephone market. The costs associated with upgrading telecommunications systems to offer enhanced services is prohibitive for many smaller telephone companies and cooperatives. I am pleased to have supported an infrastructure sharing provision which will allow smaller entities to access the services of larger telephone exchanges.

I was pleased to include provisions regarding equal employment opportunities and information redlining. Minorities are seriously lacking as participants in the telecommunications industry. Today H.R. 3636 has language that would hold telephone companies that provide cable services to the same EEO standard as cable operators must now abide by. I think this is a small but important step toward equalizing the telecommunications playing field. As new telecommunications systems are built, an issue which will of continuing concern will be access, for all Americans, to new services. H.R. 3636 addresses my concerns regarding information redlining. The ability of providers of new services to discriminate against specific geographic areas on the basis of race or economic status is too great. I am pleased that the committee took a progressive step and made explicit that the FCC must take into account the demographic makeup of the proposed area to receive new services.

Cable television plays an important and growing part of the information superhighway. It is imperative that the legislation provide for a competitive marketplace for small cable operators. Small cable operators provide services to small populations in remote areas which larger operators have no commercial interest in serving. I am pleased that this legislation contains several, important provisions to provide for a competitive marketplace for small cable operators. For example, the legislation would be preempt State and local barriers for new telecommunications services, prohibiting local government entities from overregulating cable's provision of telecommunications services. H.R. 3636 also allows for joint ventures, mergers, and acquisitions to occur in areas with populations of less than 10,000, or when a cable system serves less than 10 percent of the households in a telephone company's service area. While such provisions are a step in the right direction, I hope that additional issues will be addressed in the legislative process. For instance, franchise requirements for providers of cable services must be balanced so that everyone plays by the same rules. Additionally, interconnection and access requirements must be ensured so that small cable operators have fair and equal access to the information highway.

Lastly, I am pleased that H.R. 3636 addresses public, educational, and governmental concerns. If the information superhighway is going to serve our democracy then it is critical that these institutions have access to reach all Americans.

Again, I support this legislation and I urge my colleagues to do likewise.

Mr. FIELDS of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. SCHAEFER].

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

Mr. SCHAEFER. Mr. Speaker, I rise today in support of H.R. 3636, the National Communications Competition and Information Infrastructure Act.

When my constituents in Colorado need a telephone line, there is only one company they can call to provide that service. When my constituents want cable service, again, there is only one company to provide it.

The consumer choice of all Americans is limited in the telecommunications market today. But that choice is not limited by technology. It is limited by outdated laws and regulations that were designed over the last 60 years.

For instance, in most States, it is illegal for anyone to provide an alternative to the phone company.

H.R. 3636 clears the way for competition—and thus more choice, lower prices, and better service—in all segments of the telecommunications marketplace.

By sweeping away the laws that prevent competition in both the local telephone and cable market, H.R. 3636 paves the way for the next generation of advanced telecommunications networks. This is truly a revolutionary bill and I urge all my colleagues to support it.

Before I finish, Mr. Speaker, let me also briefly address one aspect of H.R. 3636, the Dingell-Brooks legislation to lift the MFJ restrictions, which was just debated.

While I supported this legislation in committee and here on the floor, I strongly believe that the so-called domestic content provision of this legislation needs to be stricken from the bill at some point in the legislative process. I know keeping jobs in America is an emotional issue, but violating our free-trade agreements is not only bad policy and bad economics, it is also bad for American workers in the long run.

These bills show the great work that we on the Energy and Commerce Committee can and will do.

Again, please support H.R. 3636, the Markey-Fields bill.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, I would first like to commend, as other speakers have here today, the tremendous work that the chairman, the gentleman from Massachusetts [Mr. MARKEY], has done on this legislation, and the chairman, the gentleman from Michigan [Mr. DINGELL], and the ranking minority member, the gentleman from Texas [Mr. FIELDS]; all of you have done tremendous work on this, and you deserve all the kudos you are receiving here today.

Mr. Speaker, I rise in strong support of both of the bills that we are debating here today. These bills are truly essential to the construction of the Nation's information superhighway, this is landmark legislation.

Mr. Speaker, I am particularly pleased that H.R. 3626 would allow the regional Bell operating companies to get involved in manufacturing telephone equipment in this country. I introduced legislation 4 years ago, and it has taken us a long time to get to this day. I am pleased we are here. I think this legislation will create good paying jobs in this country.

I am also pleased that H.R. 3626 includes an amendment I offered to help thousands of community newspapers across the country have a better chance to get on board the information superhighway. The National Newspaper Association believes this legislation is critically important to the future of many small-town community newspapers. It is important because it guarantees them fair access and fair rates when accessing the information highway.

This legislation gives them nothing less than a license to their future. Without it, they could be ignored or actually driven off the information superhighway. These newspapers often provide the social, political, and economic ties that bind communities together. Many are going through tough times. They face competition and disappearing ad revenue. Now, at least, they can face the electronic future with confidence that if this bill becomes law they can compete for their fair share.

Mr. Speaker, in addition, in keeping with the spirit of the Americans with Disabilities Act mandate to bring about the complete integration of individuals with disabilities into the mainstream of our society, H.R. 3636 and H.R. 3626 would ensure that advances in network services deployed by local exchange carriers are available to all our citizens.

Mr. FIELDS of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina [Mr. MCMILLAN].

Mr. MCMILLAN. Mr. Speaker, I rise in support of H.R. 3636. Along with H.R. 3626. This legislation lifts the restrictions that have long blocked a diverse competitive telecommunications industry. Not only will the competition reduce prices, enhance quality, and offer broader choices for the American consumer, it will create the incentives for industry to finance and build the information highway of the future.

That is the purpose of H.R. 3636: ... make available a switched, broadban...

communications network." And I commend Chairman MARKEY for including an amendment that directs the FCC to collect information on the rate at which this network is deployed. This will allow policymakers to make sure that the intent of Congress is being achieved.

Toward this goal, I do have a concern with the antibuyout provision in H.R. 3636 which will slow down the creation or a competitive marketplace and the construction of broadband network. By prohibiting telephone company acquisitions of cable companies in their respective territories, this bill will deter the natural convergence of voice and video technology and thereby slow the creation of a multimedia, interactive system that could potentially bring a host of combined services to the public. If H.R. 3636 adequately ensures that all program providers will have access to a telephone company's video platform, do we really need an antibuyout provision to guaranty competition—a provision that may, in fact, impede progress. I hope this can be worked out in conference.

Overall, however, I strongly support H.R. 3636 as a full step toward the completion of the information superhighway and the creation of its competive marketplace.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. SWIFT].

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

□ 1410

Mr. SWIFT. Mr. Speaker, I am proud today to say that ED MARKEY and JACK FIELDS are my friends, because today anyone who is a friend of these two gentleman is going to bask in the reflected glory of this magnificent accomplishment, bringing this very progressive piece of legislation to the floor.

The time has come to update the 1934 Communications Act to recognize new realities and technology and competition, and this bill does that.

I am pleased that the bill has incorporated an amendment to the public access provision that tightens the definition of eligible nonprofit institutions.

I want to thank the gentleman from Louisiana [Mr. TAUZIN] and his staff for their help in crafting this amendment.

As author of this provision, I did not intend to place unreasonable economic or technical burdens on carriers providing advanced telecommunications services, but I do expect that such carriers will make all necessary good-faith efforts needed to implement the goals of this provision.

Again, I commend this legislation to all of my colleagues. It is an outstanding piece of work.

Mr. FIELDS of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from New York [Mr. PAXON].

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

Mr. PAXON. Mr. Speaker, I rise in support of H.R. 3636. Two years ago Congress took what I consider a step backwards by enacting the Cable Act, which through overregulation led to consumer confusion, increased paperwork burdens, and higher rates in some instances.

Fortunately, Congress has learned from its mistake and is now pursuing a policy of competition rather than regulation. Only by increasing competition in the local telephone lop and the cable industry will Americans see the private creation of an information superhighway. Competition will also provide consumers and business with new and innovative services and technology at a reasonable cost.

In conclusion, Mr. Speaker, I am pleased to support H.R. 3636, which will move the telecommunications industry from its regulated past into the competitive 21st century.

Mr. FIELDS of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. HORN].

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

Mr. HORN. Mr. Speaker, I commend the chair and ranking Republican on both the full committee and the subcommittee for this outstanding legislation, H.R. 3636, and urge its strong support. I think it is a splendid accomplishment. It is seldom we have that much bipartisanship, and this committee has set a good example.

A number of us sent a letter to the chairman of the full committee expressing the concerns of local government. Mr. MARKEY's very fine reply where he reaffirmed the "local governments' rights to impose fees identical to the cable operator's fees on a telephone company's provision of video programming," was reassuring, my views on this legislation reflect a number of local governments such as the city of Los Angeles, Downey, Long Beach, and Signal Hill which are part of my congressional district.

Mr. Speaker, H.R. 3626, the Antitrust Reform Act, and H.R. 3636, the National Communications Competition and Information Infrastructure Act, represent the most sweeping telecommunications reform since the breakup of AT&T. What the House does today is to construct the structural framework for the revolutionary changes which have already begun changing the telecommunications field. The framework we erect today will provide for a level playing field so that competition can occur in a manner that benefits the everyday consumer while bringing new technologies into that same person's home. But passage of these bills does not mean that all pertinent issues have been resolved. Today's votes represent a means to move the process forward, so that we may send these bills to the President before the legislative session comes to a conclusion.

The issue in question, which is contained in H.R. 3636, primarily revolves around the treatment of municipal franchising authority and the new, possibly restrictive definition of cable services in the bill. In particular, I am concerned that the language of the amendments of Messrs. FIELDS and SCHAEFER that were accepted by the committee may have the unintended, and unfortunate, result of depriving our Nation's municipalities of badly needed revenue that they need to carry out the vital governmental duties they perform.

For instance, section 102(b)(2) of H.R. 3636 amends the franchise fee provision of the Cable Act to limit the revenue base on which franchise fees may be based to only those revenues an operator derives from providing cable services. According to current law, a franchising authority is entitled to 5 percent of all revenues derived from operations of a cable system. Because the term "cable service" is already defined in the Cable Act for purposes completely unrelated to its use in H.R. 3636, my concern is that section 102(b)(2) could be construed as restricting cable franchise fees only to the revenues a cable operator receives from subscribers. That is a far narrower revenue base than the Cable Act currently allows, and would deprive municipalities of the many nonsubscriber revenues a cable operator earns, such as advertising and home shopping revenues. Many municipalities across the Nation are currently receiving, and relying on, franchise fees paid by operators that include such nonsubscriber revenues. I certainly hope that it is not the intent of this legislation to deprive our municipalities of funds they are currently receiving. This issue is particularly important, since nonsubscriber revenues are the fastest growing form of cable operator revenues.

I am also concerned that the language in section 102(b)(1) may be construed as preventing municipalities from securing the full benefits for the public of any new services that cable operators may provide. Many communities have negotiated franchises with cable operators under which the cable operator furnishes institutional networks for use by schools and local governments. These are valuable resources for our schools, our children, and our local governments. I certainly hope that it is not the intent of this legislation to forbid or preempt these arrangements.

The parity of franchise and other changes provision in section 102(a) also raises similar concerns. The drafters of this provision seem not to be aware that pursuant to applicable State law, many municipalities have issued franchises to telecommunications providers to use their local rights-of-way, and municipalities rely on revenue from those providers in their budgets. Once again, I hope it is not the purpose of

this provision to deprive our already financially strapped municipalities of further revenues. There is an important question as to whether or not it is proper for the Federal Government to require local municipalities to allow private companies to use their valuable public rights-of-way for free.

In conclusion, these issues need adequate debate and consideration. I look to the product of the House-Senate conference for improvements and clarity on these issues. Finally, I am providing for the RECORD two documents. The first is a letter to Chairman DINGELL signed by myself and a number of my California colleagues. It raises a number of these issues. The second is the response to that letter by Chairman MARKEY.

HOUSE OF REPRESENTATIVES,
Washington, DC, June 23, 1994.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, 2125 Rayburn House Office Building.

DEAR MR. CHAIRMAN: City and county governments in California have successfully franchised cable television according to the provisions of the Cable Act for many years. We are concerned that H.R. 3636 does not contain a similar franchise requirement for telephone companies wishing to offer cable services and urge that you include such a provision as an amendment to H.R. 3636 when it comes before the full House for consideration.

The public rights-of-way, owned by local governments on behalf of local taxpayers, are worth billions of dollars and should be controlled by the city and county governments which build, own and maintain them. As the Cable Act requires, the best way to do this is to subject a provider of cable service to the franchise requirement. The telephone companies (telcos) which want to offer cable need to be covered by a franchising process at the local government level. Local governments want nothing more and nothing less than what they currently have in their relationship with the cable companies.

We also urge that H.R. 3636 be amended to remove provisions that restrict the right of local government to control local rights-of-ways and to collect appropriate compensation for the use of such rights-of-way. In particular, we are concerned with the provisions that: (a) strip local governments of the right to ensure telecommunication providers use public rights-of-way in a safe and reasonable manner and pay appropriate compensation for that use; and (b) limit the right of local governments to impose cable franchise fees on the provision of telecommunication services over a cable system, and to ensure that provision of such services are consistent with the public interest.

Local governments in California are eager for competition to traditional cable operators and the development of new telecommunication services, but want to be able to control the rights-of-way and ensure that competition is done on a level playing field. City and county officials and the members of the California delegation want to see the information superhighway built. Local governments should receive reasonable compensation for the use of public assets, should be able to ensure that transportation is not disrupted, and guarantee that the needs of the entire community are served by the new information superhighway. It is important that the new information superhighway fits the needs of the local community which it serves rather than simply the desires of the telephone, cable and telecommunications industries.

Thank you for your consideration in this matter.

Sincerely,

Pete Stark, M.G. Martinez, Ronald V. Dellums, Stephen Horn, Lynn Woolsey, Nancy Pelosi, Don Edwards, George Miller, Tom Lantos, Dan Hamburg, Julian C. Dixon.

COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,
Washington, DC, June 27, 1994.

Hon. STEPHEN HORN,
1023 Longworth House Office Building, Washington, DC.

DEAR STEVE: As sponsor of H.R. 3636, and as Chairman of the Telecommunications and Finance Subcommittee, I would like to take this opportunity to address the concerns you and several colleagues raised in a letter to Chairman John Dingell dated June 23, 1994. The letter addressed the role H.R. 3636 accords the cities in regulating telecommunications services.

The letter raised three major concerns with the provisions of H.R. 3636 that affect local governments' jurisdiction. The first was a concern that H.R. 3636 would "strip local governments of the right to ensure telecommunication providers use public rights-of-way in a safe and reasonable manner * * *." While this may well have been a concern with earlier drafts of H.R. 3636, the version of H.R. 3636 that will be voted on by the full House this week includes express language that reaffirms cities' jurisdiction over all activity that affects their rights-of-way. Authority over public rights-of-way is crucial to local governments and is effectively preserved in the bill.

The second concern raised in your letter was with the bill's "limit[ation of] the right of local governments to impose cable franchise fees on the provision of telecommunication services over a cable system * * *." This is a question that has caused some confusion in recent months. First, H.R. 3636 actually affirms local governments' rights to impose fees identical to the cable operator's fees on a telephone company's provision of video programming. Local governments do not currently have this authority and some have complained that telephone companies have refused to pay such a fee. Requiring that telephone companies pay equivalent fees puts them on precisely the same footing as cable companies in their future competition for cable subscribers.

H.R. 3636 does not, however, require cable companies to pay franchise fees on telephone services. Cities have never had the power to impose such fees on telephone companies. For the past 60 years, states and the federal government have traditionally been the primary regulators of telephone service. H.R. 3636 ensures this will continue to be the case, both for telephone companies and cable companies. If this were not so, as you seem to recommend, telephone companies would have an inherent, governmentally-mandated advantage over cable companies that wish to compete for their telephone customers.

Finally, you state your concern that H.R. 3636 does not give local governments a franchise over telephone companies' provision of cable service. The reason H.R. 3636 does not do this is because of the fundamental difference between the architecture of telephone networks and cable networks. Cable systems grew up as a local service within discreet communities. They typically do not extend beyond municipal boundaries nor do they typically interconnect with other systems within a state or region. In contrast, telephone systems have developed into state-wide or regional networks. To require telephone companies to restructure their networks in order to respond to each community's requirements would effectively Balkanize today's regional networks, raising costs to consumers and delaying the arrival of new, advanced services.

Instead of imposing a franchise, H.R. 3636 imposes a wide range of requirements on telephone companies that closely track requirements that are currently imposed on cable companies. For example, H.R. 3636 assures local governments of: (1) the functional equivalent of a franchise fee (up to 5% of video revenues); (2) public, educational and governmental access channels similar to those available on cable systems; (3) authority to enact consumer protection and customer service requirements; (4) oversight authority over the ownership of local video programming networks in certain situations; and, (5) authority to enact local privacy laws consistent with federal law. In this way, local governments will continue to have significant influence over telephone companies' provision of video without forcing them to restructure their networks.

It is important to point out that H.R. 3636 contains important safeguards and authorities for local governments that they do not currently enjoy. The Subcommittee office has been contacted by cities who have requested exactly these kinds of powers to help them in their dealings with powerful telephone and cable companies. If H.R. 3636 is not passed this year, cities will have little protection for the foreseeable future from telecommunications providers who have no statutory obligations vis-à-vis local governments.

Even though the provisions of the legislation do not coincide perfectly with some of the recommendations of local governments, H.R. 3636 represents a balanced, comprehensive telecommunications policy framework that should meet local governments' needs for the foreseeable future. As the 44-0 vote in the Energy and Commerce Committee indicates, there is a broad consensus in the approach this legislation takes. Passage of H.R. 3636 will be a vital and important step toward accelerating the development of the national information infrastructure and considerably increasing franchise fees available to local governments, while ensuring a competitive telecommunications marketplace that will benefit all Americans. Please feel free to contact me with any further concerns or questions about this important legislation.

Sincerely,

EDWARD J. MARKEY,
Chairman.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from South Carolina [Mr. DERRICK].

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

Mr. DERRICK. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of H.R. 3626. One thing which directly affects new investment and jobs creation is the perception of fairness. Companies don't invest, they don't create new jobs with a future when they are not sure the Government will treat them fairly. So, one thing we in Congress always need to do is stress the fact that we are all committed to fairness, and we also expect regulatory agencies such as the Federal Communications Commission to be fair, too.

That is important because there are some unanswered questions presented by this bill. For instance, it is not clear that telephone companies competing with cable TV will have the same flexibility the cable companies now enjoy. It is also not clear that if the cable companies chose to go into the telephone business, they will bear the same universal service obligations which we have placed on the phone companies.

Key provisions of H.R. 3636 could be construed as justification for tilting the playing field. And, the problem with that isn't just fairness—rather, it is also the potential negative effect that could have on future jobs creation and investment.

I want review each and every such provision of H.R. 3636, but, I do think it is important for Congress to make clear to the regulators as well as the investment community that it wants regulation to be fair and evenhanded here.

We do not want to have the sort of situation develop where cable companies have a great deal of pricing flexibility, but phone companies trying to compete with them do not. We want both to face basically the same regulatory options.

In short, we want both the perception and the reality of fairness, because that's key to new investment and jobs creation, and delivering the competition American consumer want and expect.

Mr. FIELDS of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from Tennessee [Mr. QUILLEN].

Mr. QUILLEN. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of H.R. 3636, and I encourage my colleagues to vote for it. The bill that was just discussed prior to H.R. 3636, that is, H.R. 3626, I support that and urge my colleagues to vote for it. I congratulate the chairmen and the ranking members of both committees for bringing this much-needed legislation to the floor of the House. Our information highway system will be greatly improved as a result of the passage of these measures.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentlewoman from Illinois [Mrs. COLLINS].

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Speaker, I thank the gentleman for yielding this time to me.

Chairman MARKEY, I first would like to commend you, along with the distinguished gentleman from Texas, [Mr. FIELDS] and the Telecommunications and Finance staff for the hard work and long hours you have all spent crafting this legislation and moving it expeditiously to the floor today. Your earnest efforts have resulted in a bill that, while not flawless, certainly will help pave the roads of the information superhighway with increased competition and assist in promoting greater economic opportunities for more Americans as we head into the 21st century.

I am particularly pleased that the bill before us contains interoperability language that I supported and Mr. MARKEY agreed to include in his en bloc at the full committee markup of this legislation. This language will provide many new manufacturers, who do not provide subscription services, with the ability to offer telecommunications equipment or hardware to consumers, expanding consumer choice, and enhancing competition.

In reflecting on the momentous changes occurring virtually every day in the telecommunications arena, I find it absolutely astounding that a little over 100 years ago, in my city of Chicago, the first multiple telephone switchboard in the Nation was being installed. Just as we in Congress look forward to the day in the near future when all homes, businesses, schools, and hospitals are linked by networks that will provide groundbreaking services such as telemedicine as a matter of course, so too were the community leaders of Chicago in 1879 anticipating the tremendous benefits that eventually came from the expanded deployment of telephone service throughout their region of the country.

Yet in looking forward to the opportunities presented by emerging technologies, we cannot disregard the lessons of the past and the hurdles we still face in ensuring that everyone in America plays a part in the communications revolution now underway. I refer to the well-documented fact that minority and women-owned small businesses continue to be extremely underrepresented in the telecommunications industry.

The statistics speak for themselves. The cellular telephone industry, which generates in excess of $10 billion a year, has a mere 11 minority firms offering services in its market. Overall, barely 1 percent of all telecommunications companies are minority-owned. Of women-owned firms in the United States, only 1.9 percent are involved in the communications field.

The two amendments which I offered and were adopted by the full committee will go a long way toward leading to the diversity of ownership in the telecommunications marketplace. The first amendment will require a rulemaking on the part of the Federal Communications Commission, after consultation with the National Telecommunications and Information Administration, on ways to surmount barriers to market access, such as undercapitalization, that continue to constrain small businesses, minority, women-owned, and nonprofit organizations in their attempts to take part in all telecommunications industries. Again, underlying this amendment is the obvious fact that diversity of ownership remains a key to the competitiveness of the U.S. telecommunications marketplace.

My second adopted amendment which is intended to increase the availability of venture capital and research and development funding for both new and existing small, women, and minority-owned companies will require all telecommunications providers to annually submit to the FCC their clear and detailed company policies for increasing procurement from business enterprises that are owned by minorities and women in all categories of procurement in which these entities are underrepresented. The FCC would then report to the Congress on the progress of these activities and recommend legislative solutions as needed.

As an aside, I am hopeful that when the FCC adopts its final licensing rules tomorrow for small business, minority, and women-owned firms to participate in auctions of broadband radio spectrum for a new generation of wireless technologies, known as personal communications services or PCS, it understands that this Member of Congress is watching closely to see that the goal of diversity of ownership in PCS is sufficiently advanced.

Hopefully, however, with several of the targeted provisions included in this bill, we can begin to eradicate the inequities present in the telecommunications arena and ensure that minorities and women are drivers, not simply passengers, in the superhighway fast lane. Too often in the past, these groups have been left standing on the shoulder, only to watch the big guys and gals motor down the road past them.

While my measures do not completely solve the long-standing problems that confront so many forgotten entities and enterprises in our communities, their inclusion in H.R. 3636 ensures that minorities and women will have a strong role in the fantastic industries of the future as both users and providers of services. Because of this, we all stand to benefit.

I strongly urge my colleagues to support H.R. 3636.

Mr. FIELDS of Texas. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. I thank the gentleman for yielding this time to me.

Mr. Speaker, as mayors across this country have indicated, the U.S. Conference of Mayors, the National League of Cities, they are concerned about this legislation and what it is going to open up, whether the local cable franchises can survive. They also have a stream of income from franchise fees and they have certain controls over programming that is required of the cable franchises.

My concern is that the newcomer, the telephone companies, would have those same controls. I would like to ask the gentleman from Texas these statements and inquire how he would address the concerns of the mayors across this country.

Mr. FIELDS of Texas. Mr. Speaker, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I thank the gentleman for yielding to me.

Mr. Speaker, I would agree this legislation does not prejudice the cities to assess franchise-like fees on telephone companies when they offer cable service. Additionally, cities clearly retain control over the streets, should they adequately let cable, telephone and other providers lay their networks in the ground. Further, telephone companies would, under this bill, comply with the peg requirements, broadcast of public education and local Government programming.

Mr. SHAW. In other words, there is clearly a level playing field and that there is no undue advantage given to telephone companies under this legislation.

Mr. FIELDS of Texas. Yes.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentlewoman from Arkansas [Ms. LAMBERT].

(Ms. LAMBERT asked and was given permision to revise and extend her remarks.)

Ms. LAMBERT. I thank the gentleman for yielding to me. I rise today in strong support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994.

As a freshman and recognizing the many years of work that have gone into a piece of legislation like this on an issue like this, I am certainly pleased and I appreciate the willingness of the chairman to allow me to take a role and to play a small part on behalf of rural communities and rural America.

I join my colleagues in thanking the gentleman from Massachusetts, Chairman MARKEY, of the subcommittee as well as Chairman DINGELL of the full committee, for all of their efforts on behalf of everyone in this Nation, making sure that rural communities are recognized in equal opportunity, as well as in fairness. A special thanks for their support in adding amendments to keep telephone rates in rural areas low and protect small and medium-size phone companies from unfair competition.

It was important to note, especially from the chairman of the subcommittee, that it was equally as important to him that service in Turkey Scratch, AR, was just as important as in Boston, MA.

So, my thanks to the chairman for his willingness to allow us to help in forming this bill and for rural America and a special thanks from those in Arkansas and all of rural America. This bill represents an amazing opportunity for advancements in education and in telemedicine, among other things.

The SPEAKER pro tempore (Mr. MONTGOMERY). The gentleman from Massachusetts [Mr. MARKEY] has the right to close the debate.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. NEAL].

(Mr. NEAL of Massachusetts asked and was given permission to revise and extend his remarks.)

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Mr. NEAL of Massachusetts. Mr. Speaker, I take this opportunity to express my support for H.R. 3636, the National Communications Competition and Infrastructure Act of 1994 and for H.R. 3626, the Antitrust and Communications Reform Act of 1994. I have been closely involved with cable television issues for almost 20 years as a city council or, mayor, and now Congressman. It is clear at this point that major decisions need to be made to ensure that America continues to be the world leader in communications technology and service. These two bills will move Federal policy forward as we seek to create the best possible climate for our emerging communications future. I have long felt that we must always consider the consumer as we set cable television policy. H.R. 3636 is a solid consumer bills. If signed into law as currently written, this bill would: create positive competition for each cable household. While many cable subscribers are satisfied with their service, there are a great many areas, including my home city of Springfield, MA, where consumers have been greatly upset and confused by high rates and ever-shifting channels. The Cable Act of 1984 was designed to allow the cable television industry to grow and establish itself across the country. That has happened, but at a cost. The cable market monopolies have, unfortunately, led to high prices and poor service in some areas. The Markey-Fields bill encourages true competition by allowing telephone companies and others into the market. I believe the end result will be greater service selection and lower prices for the consumer, and hasten the arrival of the much-heralded "information superhighway." The information technology sector of the economy is posed to take off. H.R. 3636 will put into effect policies that will encourage the logical development of these new technologies and systems, and protect the role of local authorities as they seek to provide their citizens with the best possible cable television and telephone service.

Clearly these provisions are designed to foster the kind of competition that will benefit the consumer and America's position in the worldwide communications market. We have been a leader in this market; H.R. 3636 will help us remain a leader.

As for H.R. 3626, I believe this bill will also be a boost for the American consumer. The 1982 court case that created our current telephone system is out of date. This bill eases restrictions on true competition in the long-distance service sector. This bill is strongly supported by many disabled activists, educators, rural Americans, small business leaders and minority groups because of the opportunities that will open up if this measure is approved. It also will promote the development of new equipment and technologies as we build the information superhighway.

Both of these bills are the result of long and careful consideration. It is important that these steps be taken now, before we have a crisis in this flagship industry. I salute Chairmen MARKEY, BROOKS, and DINGELL, as well as Congressman FIELDS on crafting language that is logical, fair, and realistic. They are seeking to craft the future of communications as we head into a new century. I urge my colleagues to support both of these important measures.

Mr. FIELDS of Texas. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I just want to say to my colleagues that this is the most sweeping change since 1934, and I do not want my colleagues to lose sight of that because we are coming up on suspension today. There will be more telecommunication development and deployment in the next 5 years than there has been this century, and I would like to think much of that is enhanced and speeded because of this legislation.

Again, Mr. Speaker, I want to compliment our chairman. I do not believe we would be here today in this fashion without the leadership of the gentleman from Massachusetts [Mr. MARKEY]. I also want to compliment the staff on both sides of the aisle who labored diligently to bring us to this point today.

Mr. Speaker, I yield the balance of my time to the gentleman from Georgia [Mr. GINGRICH], our future leader and our current minority whip.

The SPEAKER pro tempore (Mr. MONTGOMERY). The Chair recognizes the gentleman from Georgia for 2½ minutes.

Mr. GINGRICH. Mr. Speaker, I thank the gentleman from Texas [Mr. FIELDS] for yielding this time to me.

Let me say first of all that I think in this Congress this is one of the best days for the legislative process, and I think that people should realize that the gentleman from Michigan [Mr. DINGELL] and his colleague, the gentleman from California [Mr. MOORHEAD], the gentleman from Texas [Mr. BROOKS] and his ranking member, the gentleman from New York [Mr. FISH], and the gentleman from Massachusetts [Mr. MARKEY] and his ranking member, the gentleman from Texas [Mr. FIELDS], as a team developed two bills which are right here, H.R. 3626 and H.R. 3636, which are both landmarks in terms of the future of American jobs and the future of American technology, and they are also, I think, a tremendous case study in a good legislative process that is genuinely bipartisan. Here are very sophisticated, very complex and very technical issues in which Members of both parties subordinated their partisanship to the effort to un-

derstand what the marketplace and the technology made possible and to try to truly craft historic legislation. I think it is fair to say that this is, in the case of H.R. 3636, a dramatic break from 60 years. This is the new benchmark, and it was done the right way. It was done by constant consultation, by staffs working together and by dealing with some very difficult issues by very persistent negotiations.

Mr. Speaker, I think the result of these two bills taken together, and they will be joined together and go to, hopefully, the other body, and we will produce by the end of this session, I hope, a landmark legislation that will truly create an opportunity for more jobs in America. The result is going to open up the marketplace so that more entrepreneurs can try out more new ideas to create more products, to build more jobs in America by delivering better services at lower costs to more people.

Now that is a remarkable accomplishment, and in the time that I have been in this Congress I do not know of many occasions where we have had as much bipartisanship, as much sophistication and as serious an effort to deal with very complex issues, and I simply want to commend both committees and the Members who worked on them, and I ask all of my colleagues to join in voting "yes" this afternoon on this historic opportunity.

Mr. MARKEY. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Massachusetts for 1½ minutes.

Mr. MARKEY. Mr. Speaker, a year and a half ago I sat up in the second last row, May 1993, and began a conversation with the gentleman from Texas about how we could fashion a piece of legislation that would be good telecommunications policy, good social policy, and good economic policy, and, beginning with that first conversation up in that back row of the Chamber, we proceeded not only speaking to ourselves, Mr. Speaker, but to other Members here in the Chamber and to hundreds of other interested parties across this country.

The legislation which we bring out here today is one which is going to open up enormous economic and technological opportunity for our country, not only to the well-known giants, the telephone companies and the cable companies, but in many ways, more importantly, to the software industry and computer industry of this country using the open architecture, set top box protections, which we build into this legislation so the fiberoptic networks which are going to be designed to the interactivity which is going to be constructed, to all of these technologies across this country, from the innermost neighborhoods of our country to the most distant, rural parts of this country, each and every American will be given access to these exciting technologies. It will be the most important part of the economy of this country in the world over the next generation.

With this legislation accompanying the Brooks-Dingell legislation, Mr. Speaker, we are going to lead this world and have an opportunity to capture a disproportionate share of the economic benefits. But at the same time we ensure that all Americans, poor, rich, rural and urban, all benefit from it, and we do it ensuring that the economic and social policies of our country continue to capture these technological advances.

I want to congratulate again my good friend, the gentleman from Texas [Mr. FIELDS]. I want to congratulate my counsel, Gerard Waldron, with Colin Crowell, with David Moulton, Mark Horan who worked with Winnie Loeffler, with Kristan Van Hook, with Steve Popeo, with all the rest of our staff, Mike Balmoris, with David Zesiger, with Mike Regan and with Cathy Reid on the minority side, and I want to, as well, thank Sara Morris who is back and watching this right now. It would not have been possible without her. David Leach and Johnnie Roski did the same work on the other piece of legislation. They are to be congratulated.

Mr. CRAPO. Mr. Speaker, I rise today to speak about the many tough and complex issues being addressed in the area of telecommunications policy through H.R. 3636, the National Communications Competition and Information Infrastructure Act. There are several competing interests at play in this formula for emerging telecommunications policy. And I admire the efforts of Telecommunications Subcommittee Chairman ED MARKEY and Congressman JACK FIELDS for their work in weaving together a consensus that serves the public interest.

Six years ago in Idaho the legislature, of which I was Senator pro tem at the time, took a bold approach communications laws. There were doomsday predictions about how rates would skyrocket and competition would be choked off. But by adopting a more relaxed regulatory framework, Idaho created an environment conducive to the Information Age. And consumers have reaped benefits from it.

Basic telephone remain unchanged. Long-distance prices have been reduced several times. Numerous new products and services have been introduced. Competition is flourishing. And the State's communications infrastructure is leading edge. That was not accomplished by increased regulation but by relaxed regulation. In Idaho, we opened markets, provided pricing flexibility for competitive and optional services, and rate stability for essential services where competition has yet to take hold. Again, the results have exceeded expectations.

Today, I rise in support of H.R. 3636. We have taken a different path in this bill, however. With this legislation we have directed the Federal Communications Commission to make decisions on telecommunications competition issues. And what standard have we directed the Commission to use in making those competitive decisions? Not the public interest standard embodied in the 1934 Communications Act. Not a market standard—which would seem to properly focus on consumers.

Rather, at least in the area of interconnection, we stand ready to direct the FCC to abandon the public interest standard they have used for 60 years and replace it with a standard of technical feasibility. H.R. 3636 requires local telephone companies to connect competitors to their networks at any point technically feasible and economically reasonable. If our objective is competition, interconnection ought to be restricted to essential facilities. We should not legislate a standard that allows new communications entrants to piecepart the public network at their whim.

This legislation requires a telephone company to interconnect and unbundle its facilities and prices virtually anytime and anywhere another company requests it. There is no mechanism in the legislation to insure the telephone company is kept whole, nothing that requires the company requesting the unbundling to withstand the economically reasonable cost. In fact, there's a strong likelihood that local telephone companies will attempt to recover some of their costs by raising local telephone rates. That is not in the consumers' interest.

Mr. Speaker, by abandoning the public interest standard, we are likely inviting protracted litigation and sharp price increases. I supported H.R. 3636 in committee and do so on the floor. But I hope that if the legislation goes to conference, we take another look at these overly regulatory issues, refocus on the public interest, and show faith in the marketplace.

Mr. STUDDS. Mr. Speaker, hardly a day passes that we are not exposed to a multitude of new reports about the information superhighway. While we are all aware of the critical necessity of ensuring the development of an advanced communications infrastructure in the United States, it is not always clear how we will achieve that goal.

Our colleagues, Mr. MARKEY and Mr. FIELDS, have provided us a blueprint for advancing the Nation's communications highway. Their bill, the National Communications Competition and Infrastructure Act of 1993, will spur the development of the information infrastructure by letting cable companies provide basic telephone service, and by permitting local telephone companies to offer video programming within their service regions—both of which are prohibited under current law. This competition will be essential to the widespread deployment of advanced communications services throughout the Nation.

What will that mean to our citizens? Nothing short of a dramatic improvement in the quality of their lives. Full cooperation in the communications industry will mean that a wider variety of services will be available in the marketplace. Senior citizens will be able to take advantage of a broad array of shopping services from their own homes. Students throughout the country will have access to educational resources from libraries and schools throughout the world. Health care providers will be able to examine patients at remote locations. And that's just the start.

Furthermore, intense competition within the communications industry will drive down the cost of new services, ensuring their affordability to all citizens. As we have witnessed, limited competition has resulted in sustained high costs for all but the very basic telecommunications services. U.S. consumers deserve better than that.

Mr. Chairman, I strongly support the goals of H.R. 3636 and applaud Mr. MARKEY, Mr. FIELDS and others who have worked so hard to develop this well-balanced legislation. I urge my colleagues to vote for H.R. 3636.

Mr. TAYLOR of North Carolina. Mr. Speaker, I want to commend Congressman MARKEY, chairman of the Telecommunications Subcommittee, and the ranking member, Mr. FIELDS.

This is a good bill. It is not perfect, but if it were perfect, it would not pass.

Mr. MARKEY, Mr. FIELDS, and their staffs are to be praised for their efforts.

They worked diligently with all interested parties to craft a bill that attempts to promote competition in the marketplace.

They know that competition will lead to establishment of an information infrastructure much more quickly than the Federal Government throwing dollars towards this effort.

The information highway will be a great accomplishment, allowing constituents in rural areas like mine to electronically communicate with libraries, hospitals, and museums—and even Members of Congress.

It will allow for video competition, where we get movies over the phone line. One day, we may be dialing up for all services we generally go out for—groceries, clothes, and more.

I don't know anybody who is against the basic objective of this bill—more competition, more choices, and more new services.

But I am concerned that some of the provisions in this bill could be construed to frustrate that goal.

Take all the new regulatory safeguards the bill contemplates.

Everyone agrees we need safeguards. We want to make sure there's fair competition.

But what if the Federal Communications Commission decides that all these safeguards have to be firmly in place before we can have any competition?

This could literally take years. And, all that time, the American public would be sitting there—waiting for the competition that Congress has promised.

I intend to vote for H.R. 3636 because it looks like the best package we can pass at the present time.

However, I also want to emphasize that I am doing so only because I have been assured that the FCC won't regulate to stymie competition.

The new chairman of the FCC, Reed Hundt, says that he's firmly committed to full competition.

Two years ago, we all voted to re-regulate cable TV.

We were told that re-regulation would result in lower cable TV rates and more choices.

Two years after the event, we are still waiting.

I don't want to be waiting for another 2 or so years before we get video competition.

We need that now.

Mr. MACHTLEY. Mr. Speaker, I rise in support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1993. Today, it is time that competition in the cable industry is opened so that private as well as public industries can take part in the technological revolution that is changing the way the world does business. Passage of H.R. 3636 will trigger growth in the economy, which will allow the United States to remain in the forefront of technology and economic development.

H.R. 3636 will bring about a quicker and more efficient means of implementing universal service, which will provide resources and information to all Americans. By eliminating the restrictions in cable and local telephone industries, both private and public businesses will have the opportunity to provide services, resulting in more jobs for Americans and better quality of phone and video services, all at lower prices.

In addition, this legislation can provide unsurpassed benefits to the elderly and disabled by giving them easy access to resources and information. H.R. 3636 is good for the economy, good for society, and good for America's future. I urge all of my colleagues to vote for this important legislation.

Mr. KLUG. Mr. Speaker, as we are all aware, America faces new challenges in education. Growth in technology, competing world markets, and the changing perspective of the youth have created a need for an innovative way to thinking and acting in the educational arena.

This is why I give my support for H.R. 3626 and H.R. 3636. By eliminating the restrictions in the local telephone market, we can increase competition, increase technology, and provide students with the educational edge needed for success.

Inner-city, as well as rural students, increasingly find themselves isolated from a wide range of educational opportunities. H.R. 3626 and H.R. 3636 will change outdated policies to allow expanded access to global information, allowing everyone from the elementary student who lives in a disadvantaged neighborhood, to the university professor working on a cure for cancer, to have access to learning tools such as expanded databases, and electronic distance learning. This will in turn improve the quality of life, not only for them, but for all Americans. Yes, I support improving education in America. I support H.R. 3626 and H.R. 3636.

Mr. McCOLLUM. Mr. Speaker, I rise today to express my support for H.R. 3636, but do so with a caveat that I hope that we in this Chamber will keep in mind for the future. Much of what we do in this bill is done in uncharted waters. The information age is new, and we in the Congress are just beginning to legislate in this area, so I offer a basic point.

H.R. 3636 is, to say no more about it, a complicated piece of legislation. To some degree, this is to be expected, but I must say that much in H.R. 3636 concerns me. The bill, in essence, allows the phone companies into the cable television business provided they build a super cable system and then throws in an array of regulations for good measure.

For my part, I would have favored a far less regulatory approach, but this bill is a first step—a fair compromise—and for that reason I will support it.

That said, I hope that we in this body, in the future, are careful not to overburden the phone companies with restrictions. The cable industry is an extremely tough business, and we must see to it that all who wish to participate in it do so on an even playing field.

Fortunately, H.R. 3636 does give the Federal Communications Commission some flexibility in this regard. It is my hope that it will be this discretion with an understanding of the peculiarities of the cable industry, and that they, and all those involved in the regulation of cable, will see to it that competition and choice are emphasized.

H.R. 3636 is a first step and on the whole a reasonable one. Now, Mr. Speaker, let us be certain that what issues forth from this step is not heavy handed regulation, but the beginnings of a new and dynamic marketplace.

Mr. BLUTE. Mr. Speaker, I rise to commend Mr. MARKEY and Mr. FIELDS for sponsoring H.R. 3636, one of the most proconsumer and proeconomy bills to come before the 103d Congress.

The Markey-Fields bill, which provides for full competition among telecommunications and cable service providers, would serve as a catalyst in the development of the U.S. communications industry, a cornerstone to long-term economic growth and development. Although competition has become a reality in many areas of the communications industry, the time has come to lift restrictions that prevent local telephone companies and cable companies from contributing fully to the advancement of the Nation's information infrastructure.

But, more importantly, we have the responsibility of adopting laws that will enable all consumers to obtain a full range of communications services from the providers of their choice, at competitive prices. We in Congress have learned hard lessons that strict industry regulation has not brought about the deployment of new communications services, nor driven down the costs of those services. Clearly, the most viable means of achieving those goals is to adopt policies that will enable competition to flourish within the communications industry. H.R. 3636 strikes the right balance in achieving competition and in preserving the major tenet of U.S. communications policy—universal service.

Mr. MARKEY and Mr. FIELDS have crafted a bill that will serve our Nation well. I applaud their efforts and urge my colleagues to adopt H.R. 3636.

Mr. LAZIO. Mr. Speaker, today the House is taking a positive step toward opening the information superhighway by passing H.R. 3626 and H.R. 3636. These bills will increase competition in the U.S. telecommunications industry, making us more competitive in the world market, and will stimulate economic growth, creating new jobs for Americans.

The WEFA Group, a respected econometric forecasting agency, and the Economic Policy Institute, a well-known think tank, examined the impact of increased competition on the U.S. telecommunications industry. Both concluded such a change in policy would result in millions of new jobs.

WEFA found that a fully competitive telecommunications environment will create 3.6 million new jobs by the year 2003. These jobs will be spread throughout the U.S. economy and in every State in the Union. EPI found these jobs will be filled by blue-collar, noncollege-educated workers, a segment of our economy that has been particularly hard hit by layoffs and the loss of more traditional employment.

A number of Members on both sides of the aisle have worked hard to make this legislation a reality, and I commend them for their efforts. After lagging behind our international competitors, H.R. 3626 and H.R. 3636 will

help the United States recapture and maintain its lead in high technology development and marketing.

Mr. Speaker, I urge my colleagues to join me in supporting this legislation.

Ms. SNOWE. Mr. Speaker, I rise in strong support of H.R. 3636 and H.R. 3626, telecommunications legislation which will dramatically improve our Nation's telecommunications policy, setting the stage for our Nation's entry into the information age.

These measures are a compromise, and I congratulate the members of the Energy and Commerce and Judiciary Committees for their excellent work. They have ended years of deadlock between industries seeking to protect their own interests. These bills represent an opportunity to unleash the creative, competitive spirits of telecommunications industries, while providing important protections for consumers and rural areas such as universal access and rural exemptions for rural companies.

Most importantly, these bills will serve as a catalyst in the development of the U.S. communications industry, a cornerstone to long-term economic growth and development. I share the view of many in Maine, including the Maine Chamber of Commerce and Industry, that Maine's quality of life when combined with a state-of-the-art telecommunications infrastructure will be an excellent job-creating, job-attracting tool. A study by the independent econometric forecasting firm, the WEFA Group, indicated that full competition in the telecommunications industry would create 3.6 million new jobs in the United States over the next 10 years in a variety of industries in every State in the Union. In my home State of Maine, the WEFA study estimates that over 16,000 new jobs would be created in the next 10 years.

Congress has the responsibility of adopting laws that will enable all consumers to obtain a full range of communications services from the providers of their choice, at competitive prices. The most viable means of achieving these goals is to adopt policies, such as those embodied by these two bills, that will enable competition to flourish within the communications industry, while preserving universal service.

I urge my colleagues to join me in supporting H.R. 3636 and H.R. 3626.

Mr. GEPHARDT. Mr. Speaker, I rise in support of H.R. 3636 and H.R. 3626, and I commend particularly Mr. DINGELL, Mr. BROOKS, and Mr. MARKEY for their leadership in fashioning a new vision for America's vital telecommunications industry.

These bills—the most significant communications legislation in 60 years—will inject new competition into the Nation's long-distance and local telephone industries. As such, they promise to unleash new technologies that will revolutionize the American lifestyle.

For the past decade, the Nation's telecommunications policies have been determined largely in Federal courts. The 1982 Consent Decree, known as the modified final judgment [MFJ], divested AT&T of its local Bell operating companies and allowed some competition in long-distance telephone service. The resulting competition lowered prices and accelerated private investment in new long-distance technology

Under the MFJ, however, significant impediments to competition remain. The MFJ bars the Bell operating companies from providing long-distance service. Local telephone service remains heavily regulated. And the MFJ has prevented Bells from manufacturing equipment, forfeiting jobs to foreign manufacturers.

While some of these restrictions made sense in the early 1980's, subsequent developments have brought massive change to the telecommunications industry, creating new possibilities for healthy and beneficial competition. Companies that barely existed in early 1980's are now billion-dollar enterprises. Local Bell companies face focused—albeit not widespread—competition in many services.

The House legislation is intended to invigorate competition, fostering private investment in the development of a new telecommunications infrastructure.

H.R. 3636 allows the Bell operating companies to provide interstate long-distance service immediately and to begin the manufacture of equipment within 1 year, provided that their entry poses no significant possibility of lessened competition in the markets they seek to enter. Bell entry into intrastate long-distance markets remains subject to State public service commission approval, with the Justice Department given 90 days to review State decisions.

H.R. 3626 likewise opens up the market for local telephone services. It requires the Bell companies to offer use of their local networks to any competitors—such as cable companies. It also allows the Bells to offer cable services. Both bills contain mechanisms to assure continuation of universal service and retain sensible regulation where competition is unlikely to develop.

These changes portend the creation of new American jobs, perhaps more than 40,000 in Missouri alone. Moreover, the exploitation of digital technology and the creation of the information superhighway is expected to revolutionize opportunities for learning, delivering health care, conducting business, and providing government service. Under this legislation, consumers should expect to see a multitude of changes within several years: a choice of cable TV services from multiple operators, with more programming and improved prices; new choices in both local and long-distance telephone service; the ability to monitor the sick at home so they do not have to spend so much time in hospitals; expanded research and educational opportunities at schools and colleges across the State; greater opportunities for people to work at home, thereby reducing traffic congestion and increasing leisure time; expanded access to shopping and entertainment.

We know from experience that new technologies promise profound and positive change to those who embrace them. While preserving safeguards needed to maintain universal coverage and fair pricing, this legislation makes tremendous strides to realize the possibilities inherent in new technologies. We are on the verge of another technological revolution.

Mr. SERRANO. Mr. Speaker, as we are all aware, America faces new challenges in education. Growth in technology, competing world markets, and the changing perspective of the youth have created a need for an innovative way of thinking and acting in the educational arena.

This is why I give my support for H.R. 3626 and H.R. 3636. By eliminating the restrictions in the local telephone market, we can increase competition, increase technology, and provide students with the educational edge needed for success.

Inner-city, as well as rural students, increasingly find themselves isolated from a wide range of educational opportunities. H.R. 3626 and H.R. 3636 will change outdated policies to allow expanded access to global information, allowing everyone from the elementary student who lives in a disadvantaged neighborhood, to the university professor working on a cure for cancer, to all have access to learning tools such as expanded databases, and electronic distance learning. This will in turn improve the quality of life, not only for them, but for all Americans. Yes, I support improving education in America. I support H.R. 3626 and H.R. 3636.

Mr. COOPER. Mr. Speaker, I think we all owe a great deal of thanks to Chairman DINGELL, Chairman BROOKS, and Chairman MARKEY for their tireless efforts to bring telecommunications reform legislation to fruition this year. Many thought that this day would never come, and it is a tribute to your skill and dedication that it has.

Both of the bills that we will vote on today represent a step forward toward achieving what we all want—an information superhighway that benefits both consumer and business alike. I support H.R. 3636, and commend the changes made at the subcommittee and committee level. I have some reservations about H.R. 3626. As I said during the hearing process, forging this deal was a herculean achievement. That achievement should not, however, overshadow the real and important concerns of those who were not even invited to the negotiating table.

The Regional Bell Operating Companies [RBOC's] were restricted from entering long-distance, manufacturing, and information services because they had the local monopoly strength to squelch competition from smaller businesses. The decision to keep the RBOC's out of long distance, as long as they are monopolies, has been a success to this point. Little more than a decade ago, only the smallest handful of long-distance callers had a choice of carriers. Today, virtually every consumer in the Nation has a choice of at least three full-service long-distance companies. Since the breakup of the Bell system monopoly, average long-distance rates have dropped dramatically.

Prices have dropped, both residential and business users can take advantage of significant discounts offered by long-distance companies. The competitive marketplace has spurred an increase in the value of service, and technological improvements worth billions.

Competition is the force that drives our economy, and I could not be a stronger supporter of that concept across the board. In order for true, healthy, constructive competition to operate, however, we must assure the so-called level playing field. I am all for allowing the RBOC's and cable companies to compete in a fair arena. If what we do here today is to the detriment of consumers, then we have defeated the ultimate purpose.

With regard to H.R. 3626, I support the general thrust of this bill. Assertion of congres-

sional authority in this area is long overdue. I had hoped, however, that we could have agreed on an amendment that would have applied the same entry test to the RBOC's in intrastate long distance that we apply to the interstate market.

Again, let me commend Chairmen DINGELL, BROOKS, and MARKEY for their tremendous hard work to get this legislation to the floor. There is wide support for telecommunications reform this year, both in Government and the private sector. I hope that these bills will receive the support of the full House.

Mr. OLVER. Mr. Speaker, I support H.R. 3636 for the economic advantages it will bring to the new information age and the competition it will help to usher in in telecommunications. I also support this legislation for the social advantages the bill will provide by ensuring that people with disabilities have access to new technologies.

By allowing telephone companies to provide video programming, services such as narrator-spoken descriptions of on-screen action can assist the blind, while complete captioned programming can serve the deaf. For bedridden and elderly individuals the development of new services and the opening of the telecommunications network has the potential of greatly enhancing their lives, by both removing isolation and maintaining their independence.

H.R. 3636 will also expand the quality and lower the cost of education. An open telecommunications market will result in the development of new services, better products, and greater efficiency by connecting students to teachers and both to worldwide information.

The creation of new jobs in these services and industries is another advantage of H.R. 3636. Not only will these benefits be seen here at home, but they should enable us to increase our competitiveness in international markets as well. For these reasons I support and will cast my vote for H.R. 3636.

Ms. SCHENK: Mr. Speaker, I rise in strong support of both H.R. 3626 and H.R. 3636. Chairman DINGELL, Chairman MARKEY and Chairman BROOKS deserve our thanks and praise for their hard work, their vision, and their leadership in this debate.

Mr. Speaker, others will describe the many benefits of this legislative package. I'd like to focus on just one—its potential to stimulate economic growth and job creation.

Mr. Speaker, the telecommunications and information industries will be the engines of economic growth into the next century. In San Diego County, for example, telecommunications employment grew by 22 percent last year.

This growth has occurred despite a patchwork system of inflexible regulations that reflect the realities of yesterday, not the vibrant industries of today.

These bills break down the artifical barriers that stifle competition between phone companies and cable operators. They will stimulate private investment by enacting a uniform system of federal regulation. And, according to a recently released report by the President's Council of Economic Advisers, these bipartisan bills will help the private sector create more than 500,000 new jobs over the next 2½ years.

Mr. Speaker, I urge my colleagues to pass these bills and help create the next generation of high-wage jobs.

Mr. TOWNS. Mr. Speaker, I rise in support of H.R. 3636, a forward-looking bill that will advance the development of the information highway. I wish to congratulate Chairman MARKEY and the ranking member [Mr. FIELDS] and their staffs for their patience in developing a bill that has bipartisan and inter-industry support on a most difficult and complicated issue.

H.R. 3636 will open the telephone network at the local level to full competition, and will permit the local exchange companies to provide video services. In this environment, competition will flourish for both telephone and cable services, where we have seen only limited competition in the past. As more people are connected to the information highway, more entrepreneurial endeavors will develop steadily increasing service options.

These entrepreneurial companies will create jobs in a robust new industry fueled by the passage of H.R. 3636. I urge all my colleagues to support this bill.

Mr. PASTOR. Mr. Speaker, a little discussed or debated and not well-understood provision in H.R. 3636, the National Communications Competition and Infrastructure Investment Act, could have a mega-billion-dollar impact on the price of telephone service. Language in the bill states that the resale of local telephone service shall "not be prohibited or subject to unreasonable conditions."

Although it sounds rather innocent, that provision is a direct broadside at the affordability of telephone service. By conservative estimates, the historic system of telephone pricing has resulted in a $20 billion subsidy of carrier services. Permitting unlimited resale could virtually wipe out that subsidy. I am concerned that the $20 billion could not be recovered without a hefty increase in residential rates.

Resale is a practice whereby a third-party buys bulk services from the local telephone company and resells them to customers. By buying in bulk, the third-party achieves certain savings, enabling that company to undercut the local telephone company in selling primarily to business customers.

Within limits, some States permit the practice today. Third-parties can resell within the same class of service, but can't buy residence lines and sell them to business customers, or purchase business lines and sell them to interexchange carriers. The FCC permits resale in the interstate jurisdiction, but bars long distance carriers from using business service to connect the local and long distance network. Instead, the FCC requires the carriers to buy access service.

Depending on how unreasonable conditions is defined, H.R. 3636 could remove those limits and place billions of dollars of subsidies at risk. I can think of no reason why a business customer would pay $35 per month for a telephone line if a third-party will sell that customer a line for $30. Without limits on resale, that is not only possible, but likely.

Because of this concern, I urge conferees to clarify this matter to help ensure that subsidies are protected and the price of telephone service remains affordable.

Mr. MARKEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and pass the bill, H.R. 3636, as amended.

The question was taken.

Mr. FIELDS of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Debate has concluded on all motions to suspend the rules.

Pursuant to clause 5, rule I, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed earlier today in the order in which those motions were entertained. Votes will be taken in the following order:

H.R. 3626, by the yeas and nays; and H.R. 3636, by the yeas and nays.

The Chair will reduce to 5 minutes the time for the second electronic vote after the first vote in this series.

ANTITRUST AND COMMUNICATIONS REFORM ACT OF 1994

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 3626, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill H.R. 3626, as amended, on which the yeas and nays are ordered.

The Chair reminds Members that the next vote will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 5, not voting 6, as follows:

[Roll No. 292]

YEAS—423

Abercrombie	Bishop	Clayton
Ackerman	Blackwell	Clement
Allard	Bliley	Clinger
Andrews (ME)	Blute	Clyburn
Andrews (NJ)	Boehlert	Coble
Andrews (TX)	Boehner	Coleman
Applegate	Bonilla	Collins (GA)
Archer	Bonior	Collins (IL)
Armey	Borski	Collins (MI)
Bacchus (FL)	Boucher	Combest
Bachus (AL)	Brewster	Condit
Baesler	Brooks	Conyers
Baker (CA)	Browder	Cooper
Baker (LA)	Brown (CA)	Coppersmith
Ballenger	Brown (FL)	Costello
Barca	Brown (OH)	Cox
Barcia	Bryant	Coyne
Barlow	Bunning	Cramer
Barrett (NE)	Burton	Crane
Barrett (WI)	Buyer	Crapo
Bartlett	Byrne	Cunningham
Barton	Callahan	Danner
Bateman	Calvert	Darden
Becerra	Camp	de la Garza
Bellenson	Canady	Deal
Bentley	Cantwell	DeFazio
Bereuter	Cardin	DeLauro
Berman	Carr	DeLay
Bevill	Castle	Dellums
Bilbray	Chapman	Derrick
Billirakis	Clay	Deutsch

Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Dooley
Doolittle
Dreier
Duncan
Dunn
Durbin
Edwards (CA)
Edwards (TX)
Ehlers
Emerson
Engel
English
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Fingerhut
Fish
Foglietta
Ford (MI)
Ford (TN)
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frost
Furse
Gallegly
Gallo
Geidenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodlatte
Goodling
Gordon
Goss
Grams
Grandy
Green
Greenwood
Gunderson
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings
Hayes
Hefley
Hefner
Herger
Hinchey
Hoagland
Hobson
Hochbrueckner
Hoekstra
Horn
Houghton
Hoyer
Huffington
Hughes
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Inslee
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klein
Klink
Klug
Knollenberg
Kolbe
Kopetski
Kreidler
Kyl
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Laughlin
Lazio
Leach
Lehman
Levin
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lloyd
Long
Lowey
Lucas
Machtley
Maloney
Mann
Manton
Manzullo
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McHale
McHugh
McInnis
McKeon
McKinney
McMillan
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murphy
Murtha
Myers
Nadler
Neal (MA)
Neal (NC)
Nussle
Oberstar
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Reynolds
Richardson
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schenk
Schiff
Schroeder
Schumer
Scott
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shepherd
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter
Smith (IA)
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stark
Stearns
Stenholm
Stokes
Strickland
Studds
Stump
Stupak
Sundquist
Swett
Swift
Synar
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Unsoeld
Upton
Valentine
Velázquez
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Washington
Waters
Watt
Waxman
Weldon
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—5

Gonzalez
Holden
Obey
Petri
Yates

NOT VOTING—6

Dornan
Flake
Hilliard
Hoke
Pombo
Ridge

□ 1449

Mr. YATES changed his vote from "aye" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NATIONAL COMMUNICATIONS COMPETITION AND INFORMATION INFRASTRUCTURE ACT OF 1994

The SPEAKER pro tempore (Mr. MONTGOMERY). The pending business is the question of suspending the rules and passing the bill, H.R. 3636, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and pass the bill, H.R. 3636, as amended, on which the yeas and nays are ordered.

The Chair will tell the Members that this is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 4, not voting 7, as follows:

[Roll No. 293]

YEAS—423

Abercrombie
Ackerman
Allard
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Archer
Armey
Bacchus (FL)
Bachus (AL)
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barca
Barcia
Barlow
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bateman
Becerra
Beilenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Blackwell
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burton
Buyer
Byrne
Callahan
Calvert
Camp
Canady
Cantwell
Cardin
Castle
Chapman
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Coppersmith
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cunningham
Danner
Darden
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Derrick
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Dooley
Doolittle
Dreier
Duncan
Dunn
Durbin
Edwards (CA)
Edwards (TX)
Ehlers
Emerson
Engel
English
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Fingerhut
Fish
Foglietta
Ford (MI)
Ford (TN)
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frost
Furse
Gallegly
Gallo
Geidenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodlatte
Goodling
Gordon
Goss
Grams
Grandy
Green
Greenwood
Gunderson
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings
Hayes
Hefley
Hefner
Herger
Hinchey
Hoagland
Hobson
Hochbrueckner
Hoekstra
Horn
Houghton
Hoyer
Huffington
Hughes
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Inslee
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klein
Klink
Klug
Knollenberg
Kolbe
Kopetski
Kreidler
Kyl
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Lazio
Leach
Lehman
Levin
Levy
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lloyd
Long
Lowey
Lucas
Machtley
Maloney
Mann
Manton
Manzullo
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McHale
McHugh
McInnis
McKeon
McKinney
McMillan
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murphy
Murtha
Myers
Nadler
Neal (MA)
Neal (NC)
Nussle
Oberstar
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Reynolds
Richardson
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schenk
Schiff
Schroeder
Schumer
Scott
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shepherd
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter
Smith (IA)
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stark
Stearns
Stenholm
Stokes
Strickland
Studds
Stump
Stupak
Sundquist
Swett
Swift
Synar
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli

Towns	Walker	Wise
Traficant	Walsh	Wolf
Tucker	Washington	Woolsey
Unsoeld	Waters	Wyden
Upton	Watt	Wynn
Valentine	Waxman	Young (AK)
Velazquez	Weldon	Young (FL)
Vento	Wheat	Zeliff
Visclosky	Whitten	Zimmer
Volkmer	Williams	
Vucanovich	Wilson	

NAYS—4

Gonzalez	Petri
Obey	Yates

NOT VOTING—7

Carr	Hilliard	Ridge
Dornan	Lambert	
Flake	Pombo	

□ 1501

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. LAMBERT. Mr. Speaker, on rollcall vote No. 283 (H.R. 3636) providing for the consideration of the National Communications Competition and Information Infrastructure Act of 1994, my vote was not recorded. My intent was to vote "aye" on this bill as I am in favor of it.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on H.R. 3636, the bill just passed.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 3626, ANTITRUST AND COMMUNICATIONS REFORM ACT OF 1994

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the Clerk of the House, in the engrossment of the bill, H.R. 3626, be authorized to delete title III of H.R. 3626, to add at the end of title II of H.R. 3626 the text of titles I through IV of H.R. 3626, to redesignate titles I through IV of H.R. 3626 as titles III through VI of H.R. 3626, to redesignate section numbers and references thereto accordingly, and to conform the table of contents and to make such other technical and conforming changes as may be necessary.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. FISH. Mr. Speaker, reserving the right to object, I, of course, will not object. I simply want the views of the gentleman from Texas, chairman of the Committee on the Judiciary. The purpose of this unanimous consent request is simply to marry up the two bills just passed by the House this afternoon?

Mr. BROOKS. Mr. Speaker, if the gentleman will yield, the gentleman is absolutely correct. We can send them to the Senate and have a joint conference. The bill that is now being considered in the other body includes both components.

Mr. FISH. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Without objection, H.R. 3636 is laid on the table.

There was no objection.

ANNOUNCEMENT REGARDING PREPRINTING OF AMENDMENTS ON H.R. 4299, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1995

(Mr. MOAKLEY asked and was given permission to address the House for 1 minute.)

Mr. MOAKLEY. Mr. Speaker, the Rules Committee has granted a rule for H.R. 4299, the Intelligence Authorization Act for fiscal year 1995, that would require any amendments to H.R. 4299 be printed in the CONGRESSIONAL RECORD prior to the consideration of the bill. It is anticipated that H.R. 4299 will be considered in the House upon our return from the July 4 district work period.

Members should be aware, that the rule the Committee reported, provides for consideration of only those amendments that have been filed in the CONGRESSIONAL RECORD prior to consideration of H.R. 4299.

Again, H.R. 4299 is not expected to be considered by the House until the week of July 11, however, it is important that Members who desire to amend this bill, file their amendments in the CONGRESSIONAL RECORD as soon as possible.

I thank the Members of the House for their consideration in this matter.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST H.R. 4649, DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 103-564) on the resolution (H. Res. 466) waiving certain points of order against the bill (H.R. 4649) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4600, EXPEDITED RESCISSIONS ACT OF 1994

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 103-565) on the resolution (H. Res. 467) providing for consideration of the bill (H.R. 4600) to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed rescissions of budget authority, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4299, INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1995

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 103-566) on the resolution (H. Res. 468) providing for consideration of the bill (H.R. 4299) to authorize appropriations for fiscal year 1995 for intelligence, and intelligence-related activities of the U.S. Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, which was referred to the House Calendar and ordered to be printed.

GENERAL LEAVE

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill (H.R. 4606) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes, and that I may be permitted to include tables, charts, and other extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1995

Mr. SMITH of Iowa. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4606) making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not to exceed 1 hour, the time to be equally divided and con-

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