

HEINONLINE

Citation: 1 Compilation of Selected Acts within the Jurisdiction
the Committee on Energy and Commerce 635 2005

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Mon Apr 22 21:13:10 2013

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

To amend the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes.

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

SECTION 1. [47 U.S.C. 609 nt] SHORT TITLE.

This Act may be cited as the "Cable Television Consumer Protection and Competition Act of 1992".¹

SEC. 2. [47 U.S.C. 521 nt] FINDINGS; POLICY; DEFINITIONS.

(a) FINDINGS.—The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(4) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

¹ Public Law 102-385, 106 Stat. 1460, approved Oct. 5, 1992.

(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.

(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934. The distribution of unique noncommercial, educational programming services advances that interest.

(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 of providing a fair, efficient, and equitable distribution of broadcast services.

(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets

and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels

adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.

(b) STATEMENT OF POLICY.—It is the policy of the Congress in this Act to—

(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

* * * * *

[Sections 2(c) and 3 through 25 contained amendments to the Communications Act of 1934]

* * * * *

SEC. 10. CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS.

(a) * * *

* * * * *

(c) [47 U.S.C. 531 nt] PROHIBITS SYSTEM USE.—Within 180 days following the date of the enactment of this Act, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any pro-

gramming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

* * * * *

SEC. 26. [47 U.S.C. 521 nt] SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.

(a) **STUDY REQUIRED.**—The Federal Communications Commission shall conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

(b) **REPORT ON STUDY.**—The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) **ANALYSIS OF PRECLUSIVE CONTRACTS REQUIRED.**—

(1) **ANALYSIS REQUIRED.**—In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

(2) **DEFINITION.**—For purposes of the subsection, the term “preclusive contract” includes any contract that prohibits—

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

SEC. 27. [47 U.S.C. 521 nt] APPLICABILITY OF ANTITRUST LAWS.

Nothing in this Act or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

SEC. 28. [47 U.S.C. 325 nt] EFFECTIVE DATE.

Except where otherwise expressly provided, the provisions of this Act and the amendments made thereby shall take effect 60 days after the date of enactment of this Act.

TELECOMMUNICATIONS AUTHORIZATION ACT OF 1992
