

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

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

(18) the term “State” means any State, or political subdivision, or agency thereof;

(19) the term “usable activated channels” means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(20) the term “video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(June 19, 1934, ch. 652, title VI, §602, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2780; amended Pub. L. 102-385, §2(c), Oct. 5, 1992, 106 Stat. 1463; Pub. L. 104-104, title III, §§301(a), 302(b)(2), Feb. 8, 1996, 110 Stat. 114, 124.)

AMENDMENTS

1996—Par. (6)(B). Pub. L. 104-104, §301(a)(1), inserted “or use” after “the selection”.

Par. (7)(B). Pub. L. 104-104, §301(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: “a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way.”

Par. (7)(C) to (E). Pub. L. 104-104, §302(b)(2)(A), which directed substitution of “, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E)” for “, or (D)”, was executed by making the substitution for “; or (D)” to reflect the probable intent of Congress.

Pars. (12) to (20). Pub. L. 104-104, §302(b)(2)(B), (C), added par. (12) and redesignated former pars. (12) to (19) as (13) to (20), respectively.

1992—Pub. L. 102-385 added pars. (1), (12), and (18) and redesignated former pars. (1) to (10) as (2) to (11), respectively, former pars. (11) to (15) as (13) to (17), respectively, and former par. (16) as (19).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

§ 531. Cable channels for public, educational, or governmental use

(a) Authority to establish requirements with respect to designation or use of channel capacity

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

(b) Authority to require designation for public, educational, or governmental use

A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator’s proposal for a franchise renewal, subject to section 546 of this title, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

(c) Enforcement authority

A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b) of this section.

(d) Promulgation of rules and procedures

In the case of any franchise under which channel capacity is designated under subsection (b) of this section, the franchising authority shall prescribe—

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

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

(e) Editorial control by cable operator

Subject to section 544(d) of this title, a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

(f) “Institutional network” defined

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

(June 19, 1934, ch. 652, title VI, §611, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2782; Pub. L. 104-104, title V, §506(a), Feb. 8, 1996, 110 Stat. 136.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-104 inserted before period at end “, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity”.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of

Pub. L. 98-549, set out as a note under section 521 of this title.

REGULATIONS

Pub. L. 102-385, §10(c), Oct. 5, 1992, 106 Stat. 1486, provided that: "Within 180 days following the date of the enactment of this Act [Oct. 5, 1992], 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 programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct."

[For information regarding constitutionality of section 10(c) of Pub. L. 102-385, set out above, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.]

§ 532. Cable channels for commercial use

(a) Purpose

The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

(b) Designation of channel capacity for commercial use

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

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

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

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

(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on October 30, 1984.

(E) An operator of any cable system in operation on October 30, 1984, shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel capacity available for commercial use as such capacity becomes available until such time as the cable operator is in full compliance with this section.

(2) Any Federal agency, State, or franchising authority may not require any cable system to

designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

(3) A cable operator may not be required, as part of a request for proposals or as part of a proposal for renewal, subject to section 546 of this title, to designate channel capacity for any use (other than commercial use by unaffiliated persons under this section) except as provided in sections 531 and 557 of this title, but a cable operator may offer in a franchise, or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

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

(5) For the purposes of this section, the term "commercial use" means the provision of video programming, whether or not for profit.

(6) Any channel capacity which has been designated for public, educational, or governmental use may not be considered as designated under this section for commercial use for purpose of this section.

(c) Use of channel capacity by unaffiliated persons; editorial control; restriction on service; rules on rates, terms, and conditions

(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) of this section for commercial use, the cable operator shall establish, consistent with the purpose of this section and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on October 30, 1984, if the provision of such programming is intended to avoid the purpose of this section.

(4)(A) The Commission shall have the authority to—

(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and