



# WASHINGTON NEWSLETTER



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2) House Education and Labor Committee List  
3) Reprint, Cable Telecommunications Act (S. 2172)

### Lawsuit on Impounded LSCA Funds

Seven states have gone to court over the Reagan Administration's refusal to release the full amount of congressionally-approved funds for the Library Services and Construction Act. The lawsuit, prepared by New York Attorney General Robert Abrams' office, was filed in Federal District Court in Washington, D.C. on March 5. The states of California, Florida, Kentucky, Maryland, Ohio and Oklahoma joined as co-plaintiffs. The suit seeks a court order compelling the Administration to end its illegal impoundment of library funds and to distribute to the states the full amount appropriated by Congress for this purpose.

In a press release on the suit New York Attorney General Abrams said, "The President and his advisors seem to have a short memory, for it was just nine years ago that President Nixon's similar effort to impound funds appropriated by Congress was dealt a swift and decisive setback by the courts." New York Commissioner of Education Gordon Ambach explained: "This case is an important test of whether the will of the Congress can be undermined by the Administration. If this illegal impoundment of library funds goes unchallenged, the Administration will act as if it has an open license to withhold federal funds whenever it chooses."

In a continuing resolution (PL 97-92) for the first half of FY 1982, Congress funded LSCA I and III at the rate of \$71,520,000, but the Office of Management and Budget allowed the Education Department to release funds only at the September budget request level of \$51,810,000. Following a General Accounting Office opinion on February 5 that the withholding was illegal impoundment, the Administration submitted a hurry up rescission request to Congress for the lower amount on February 5, then announced on February 11 that the funds were being released, but on February 19 characterized that announcement as "premature" and asked GAO to review the issue again.

At a hearing on the impact of budget cuts on libraries (see separate article) on March 10, Rep. Peter Peyser (D-NY), who had requested the earlier GAO opinion, announced that in a broader study of impoundment issues to be released within a few days, GAO would reaffirm its original position that the LSCA withholding was illegal impoundment. Peyser said he would notify White House Chief of Staff James A. Baker III who had assured him the Administration would support GAO's final opinion.

LATE NOTE: The second GAO opinion, dated March 10, confirms the first and backs it up with a detailed analysis. GAO notes that its first opinion, that withholding LSCA funds is illegal impoundment, was based on application to the Library Services and Construction Act of the so-called "fourth disclaimer" of the Impoundment Control Act which provides that: "Nothing contained in this Act or in any amendments made by this Act, shall be construed as--...(4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder." Because OMB disagreed with the first opinion and because the meaning of the fourth disclaimer has yet to be fully articulated, GAO has addressed the matter in detail. GAO states its conclusion as follows in its letter to the President of the Senate and the Speaker of the House:

We concluded that the fourth disclaimer limits whatever authority would otherwise inure to the President under the Impoundment Control Act to impound funds made available by mandatory statutes. The reach of the disclaimer extends to all mandatory spending statutes, regardless of when they were passed or whether they contain an express prohibition against impoundment.

#### Hearing on Impact of Budget Cuts

Data on the impact of the proposed budget reductions on library services was provided by 16 witnesses at a hearing March 10 by the House Subcommittee on Post-secondary Education. The hearing covered the impact of proposed budget cuts for FY 1982 and zero funding in FY 1983 for Education Department library programs and the National Commission on Libraries and Information Science. The witness list included: State Librarians William Asp (MN), Richard Cheski (OH), David McKay (NC), James Nelson (KY), Elliott Shelkrot (PA), and Joseph Shubert (NY); Russell Bidlack, University of Michigan Library School; Forrest Brown, St. Olaf College Library (MN); Anna Curry, Enoch Pratt Free Library, Baltimore; Joan Collett, St. Louis Public Library; Hardy Franklin, D.C. Public Library; Dale Brown, Library and Media Services, Alexandria (VA) City Schools; Leonore Bright, White House Conference on Library and Information Services Task Force; Catherine Lenix-Hooker, Schomburg Center for Research in Black Culture (NYC); Connecticut State Representative Gail Orcutt; and Daniel Carter, Texas Instruments.

Subcommittee Chairman Paul Simon (D-IL) asked about trends in library acquisitions, and was particularly impressed by the statistics provided by Joan Collett. In the ten years from 1971 to 1981, the St. Louis Public Library's current periodical titles dropped from 4,596 to 1,942; current newspaper titles from 147 to 73; volumes added per year from 94,854 to 40,749; full-time staff from 362 to 224. In one month the library received 2,662 interlibrary loan requests from other libraries while requesting only 30 items for its own users. Such data dramatizes why local and state funds cannot fill any gaps left by federal funding cuts.

ACTION NEEDED: Reps. Simon and Ike Andrews (D-NC) announced that the House Education and Labor Committee had just recommended to the Budget Committee that library programs be funded at the current level, and would use the testimony to back up that recommendation. However, Committee members and all Members of Congress also need to hear from their constituents on the impact of the budget proposals. Unfortunately, few letters on libraries have been received as yet. Rep. Ted Weiss

(D-NY) also urged library users to write to their legislators. See the "IMMEDIATE ACTION NEEDED" page in the February 9 Newsletter for suggestions on your letters, and be sure to send a blind copy to the ALA Washington Office. Authorizing committee lists are attached to this Newsletter; appropriations committee lists were attached to the February 9 issue.

Postal Items

Postal Rates and Subsidies. On February 23, Eileen Cooke, ALA Washington Office Director, testified before a House Post Office and Civil Service subcommittee to protest the likely increase in the fourth class library rate which will result if Congress accepts President Reagan's fiscal 1983 budget proposal to reduce the revenue foregone appropriation to \$500 million. The request is \$208 million less than the authorized amount under the Omnibus Budget Reconciliation Act (see ALA Washington Newsletter, July 17, 1981). The revenue foregone subsidy pays the difference between attributable costs and total costs for certain types of nonprofit mailers and also pays for the phasing in of attributable costs for certain rates over a period of years. The most recent increase in the fourth class library rate which took effect January 10, 1982 was required because Congress did not provide as much subsidy as was needed. The changes during 1981 and the phased rate schedule now in effect for the fourth class library rate are shown below:

	<u>Permanent Phased Rate Increases in Cents</u>							
	Step 9	Step 9	Step 10	Step 10	Step 13	Step 14	Step 15	Step 16
	as of 7/6/80	as of 3/22/81	as of 7/6/81	as of 11/1/81	as of 1/10/82	as of 7/6/82	as of 7/6/83	as of 7/6/84
<u>Library Rate</u>								
First pound	19	21	25	24	32	35	38	41
Each addit. lb. through 7 lbs.	7	8	9	9	11	12	13	14
Each addit. lb.	5	5	6	6	7	7	7	7.5

Sen. Quentin Burdick (D-ND) plans to offer an amendment to the still pending postal appropriations bill (HR 4121) in the Senate which would add \$77 million to the postal appropriation for FY 1982. If passed, the amendment could result in the roll back of some nonprofit rate increases implemented in January 1982. ALA has joined a coalition of nonprofit organizations urging Senators to accept the Burdick amendment.

In recent testimony on the FY 1983 budget, Postmaster General William Bolger recommended that "Congress should decide which mail categories get how much of the benefit from this subsidy, as it did in the recent continuing resolution. In the absence of specific allocation instructions, this would cut into the continuing subsidy for all except the free mail categories such as free mail for the blind, and would require increases to levels above step 16...." If Congress accepts the President's request to reduce revenue foregone to \$500 million, the library rate would increase to 43¢ for the first pound, 15¢ for the second through seventh pound, and 8¢ for each additional pound. If implementation of these increases were delayed beyond October 1, 1982, the rates would be even higher.

ACTION NEEDED: Those concerned about these potential increases and the premature ending of phased rates should write letters explaining the effect on library budgets and what services would be eliminated or reduced as a result. In addition to your own legislators, address such letters to the chairmen of the House and Senate Subcommittees on Treasury, Postal Service and General Government Appropriations (Rep. Edward Roybal, D-CA; and Sen. James Abdnor, R-SD). These subcommittee lists were attached to the February 9 Newsletter. Please send blind copies of your correspondence to the ALA Washington Office.

Nonmachinable Surcharge. Once again a few postmasters have been incorrectly imposing a surcharge on nonmachinable packages sent at the fourth-class library rate. Section 753 of the Domestic Mail Manual (Issue 6, 7-7-81) specifies that a 50 cent nonmachinable surcharge must be paid for a parcel mailed at inter-BMC/ASF parcel post rates if it is a film case weighing over 5 pounds or having strap type closures, or if it meets certain other specifications. The March 26, 1981 issue of the USPS Postal Bulletin (p. 13) in announcing the surcharge clarified that the "surcharge is not to be applied to mailings at intra-BMC/ASF parcel post rates, bound printed matter rates, special fourth-class rates, or the library rates." (BMC/ASF stands for Bulk Mail Center/Auxiliary Service Facility.) This information should be all that is needed to straighten out such situations, but USPS advises that if problems persist, library mailers may write to Consumer Advocate, U.S. Postal Service, Washington, D.C. 20260. Please send blind copies of any correspondence to the ALA Washington Office.

Library Postage Stamps. There will now be two library-related 20-cent commemorative postage stamps this year. The first, honoring the Library of Congress, will be issued on April 21 during National Library Week at a ceremony at LC. The second, honoring "Libraries of America," will be issued July 13 at a ceremony during the ALA Annual Conference in Philadelphia.

#### Proposed Standards for Federal Librarians

After Rep. William Ford (D-MI), Chairman of the House Committee on Post Office and Civil Service, asked Donald Devine, Director of the U.S. Office of Personnel Management, to again extend the deadline for responses to OPM's proposed standards for federal librarians, ALA was informed that its deadline has been extended to April 9, 1982. ALA's steering committee worked intensively to meet OPM's March 10 deadline and has prepared a response with recommendations based on the Resolution passed by Council at Midwinter (see ALA Washington Newsletter, February 9, 1982).

Many thanks to the ALA members who sent the Washington Office and the Office for Library Personnel Resources in Chicago their comments on the draft standards. Close to 140 responses were received. A copy of the executive summary of ALA's response will be sent to those who wrote to the Association about the standards. Those who want a copy of the executive summary or a copy of the full document can obtain one by the end of April from Margaret Myers, Director, OLPR, ALA, 50 East Huron St., Chicago, IL 60611. In February, OLPR filed a request under the Freedom of Information Act with OPM to obtain information on the data and procedures used in writing the proposed standards. At press time, no response had come from OPM.

#### GPO Sales Program

At a business meeting February 9 the Joint Committee on Printing decided the public interest would not be served by immediate closing of 23 of the 27 GPO bookstores, as the Public Printer has proposed. The JCP passed a resolution reaffirming congressional support for the distribution of publications through government bookstores, directing the Public Printer to include them in his new marketing program, and directing the General Accounting Office to conduct a financial analysis of the entire General Sales Program to provide a reliable basis upon which to evaluate the performance of the sales program and the bookstores in the future. Prior to the JCP meeting GAO had concluded that the bookstores contribute at least marginally to the overall operations and recommended that problems related to the selection of publications for sale and the management of inventories in Washington should be addressed first. The more comprehensive GAO study requested by JCP is to be completed within a year. At an appropriations hearing on Feb. 23, Public Printer Danford Sawyer reiterated his intention to close the 23 bookstores.

## Telecommunications

Common Carriers. In the current series of hearings on HR 5158, the Telecommunications Act of 1981, and the proposed AT&T antitrust settlement, February 24 was devoted to "The Impact on Users." Testifying before the House Subcommittee on Telecommunications, Consumer Protection, and Finance Subcommittee for ALA was Ronald Diener, Executive Director of OHIONET, one of 20 regional networks that contract with OCLC on behalf of member libraries.

Diener's testimony pointed out that for OCLC participating libraries, telecommunications costs per terminal increased 50 percent in two years, from \$104 per month at the beginning of 1980 to \$156 per month at the end of 1981. His testimony included the Resolution on the Telecommunications Act of 1981 passed by ALA Council on January 27, which was appended to the February 9 Newsletter. It also included a resolution on federal telecommunications policy passed in February by the OCLC Users Council with five recommendations:

RESOLVED, that AT&T and the Bell System operating companies continue to provide installations, maintenance, service and billings that are direct, simple, and straightforward; and at the same time, that AT&T offer interconnect services to Bell System operating company competitors.

RESOLVED, that "basic" common carrier service be protected and retained at economic and efficient performance levels.

RESOLVED, that AT&T continue to be restrained from selling "information" as such, whether combined with common carrier service or not, and that the medium and content of telecommunication be regulated and controlled (fairness doctrine) separately.

RESOLVED, that AT&T continue to be restrained from anti-competitive business practice in the field of telecommunication and computer equipment, software and service.

RESOLVED, that rates be established for the general public (pro bono) and nonprofit institutions using criteria other than size for discounts on telecommunications to ensure public access and delivery of information.

Cable TV. Some of the cable TV provisions removed from the Senate-passed telecommunications bill (S. 898) have reappeared in a comprehensive cable bill introduced March 4 by Senate Communications Subcommittee Chairman Barry Goldwater (R-AZ). S. 2172 would give the FCC exclusive jurisdiction over cable, but would allow states to regulate rates for public access channels and basic service and in other areas where not inconsistent with FCC authority. Under the bill the FCC would set "reasonable ceilings" for franchise fees, and cable systems with 20 or more channels would be required to set aside 10 percent for public, educational and governmental use.

REACTIONS NEEDED: Librarians involved with cable television are urged to examine the text of the bill and explanatory material in the attached reprint, and send comments quickly to the ALA Washington Office. The Senate subcommittee will hold hearings on S. 2172 April 27-30.

Oversight Hearing on National Archives

"The patient is alive, but the vital signs are weak and the prognosis is guarded at best." Thus did the normally staid General Accounting Office sum up its recent evaluation of the preservation activities of the National Archives and Records Service. The GAO representative joined numerous witnesses during two days, March 2 and 4, of oversight hearings on the National Archives before the House Subcommittee on Government Information and Individual Rights. Subcommittee Chairman Glenn English (D-OK), noted that "as we enter the decade of the 80s, a decade of many historically significant anniversaries, we find this very important cultural institution reeling from budget cuts."

The hearings opened with two of the most well-known users of the Archives -- Alex Haley and Barbara Tuchman. Two issues dominated the hearings: severe budget cuts, which Tuchman likened to "the burning of the Library of Alexandria in the third century B.C.," and whether the Archives is properly placed as part of the General Services Administration, the government's mammoth property management agency.

At issue was the fact that the FY 1982 continuing resolution (PL 97-92) imposes a 16 percent cut on the National Archives and Records Service (NARS), the impact of which is almost doubled because 41 percent of NARS' budget is tied up in fixed costs charged by GSA for its facilities including regional centers and presidential libraries. A reduction-in-force has reduced the staff by about 140 people; others have been downgraded, and unpaid furloughs are in the works. Archivist Robert Warner, walking a delicate line between support of the Administration and responsiveness to the subcommittee, admitted that many functions were being reduced or postponed. GSA Administrator Gerald Carmen announced in his testimony that the formula for charges on NARS facilities would be adjusted so that NARS would pay \$5 million less to the Public Buildings Service in FY 1982. This, he said, "would eliminate the need for significant furloughs of Archives staff."

Many of the interested organizations testifying, such as the Society of American Archivists, the American Historical Association, and the National Genealogical Society, urged the subcommittee to consider legislation making NARS an independent agency, such as S. 1421 which is pending in the Senate. Disadvantages of the current arrangement under GSA were cited. The previous GSA Administrator attempted to disperse records to Records Centers across the country although NARS opposed the plan, which was later dropped. A GSA-imposed reorganization underway now will move the records management function out of the Archives over opposition within NARS. The Archivist is unable to defend his budget directly to OMB or to Congress. Over the last five years NARS staff decreased by one percent while reference requests increased by 80 percent. GSA is one of the few agencies which has not appealed the current 16 percent cut to Congress.

ALA, which has not so far taken an official position on NARS' independence, will file a statement for the hearing record, with emphasis on the points in the Resolution on the National Archives and Records Service passed by ALA Council on January 27 (appended to February 9 Newsletter) -- the elimination of interlibrary loan of microfilm reels of census materials from the Fort Worth Record Center, and maintenance of the archival government publications collection transferred to NARS from GPO. The statement will also reiterate ALA support for the National Historical Publications and Records Commission, whose grant programs need reauthorization and whose staff is down from 23 to 8.

### HEA II-B Training - Final Regulations

Final regulations for the Higher Education Act title II-B Library Career Training Program were published in the March 5 Federal Register (pp. 9786-93).

### ECIA Chapter 2 Block Grant - Proposed Regulations

Proposed regulations for the elementary and secondary education block grant (Chapter 2 of the Education Consolidation and Improvement Act of 1981) were published in the February 12 Federal Register (pp. 6598-6607). The proposed regs are the first step in implementation of the new block grant which replaces the ESEA IV-B school library resources and instructional equipment and over 30 other categorical education programs. Of all the programs consolidated, the block grant most resembles the operation of ESEA IV-B. However, the proposed regs are very minimal -- due partly to the provisions of the law and partly to the Administration's deregulation philosophy. Comments are due by April 13. For further information on the proposed regs contact: Allen King, Educational Support Services, Office of Elementary and Secondary Education 400 Maryland Ave., S.W., Rm. 2079, Washington, D.C. 20202 (202/245-8407). The ALA Washington Office is interested in hearing reactions to the proposed regs by March 31 in preparation for an ALA response.

### Library of Congress Funding

The House Legislative Appropriations Subcommittee, chaired by Rep. Vic Fazio (D-CA), held a two-day hearing on the Library of Congress budget request for FY 1983 of \$223,760,000 on March 2 and 3. Librarian of Congress Daniel Boorstin explained LC's two emphases this year: improving services to the increasing number and variety of their users and improving urgent measures to preserve the Library's deteriorating collections. Although the reception was cordial, increases are unlikely. Rep. Fazio acknowledged that LC benefits all libraries, an indication that past expressions of support on the LC budget request have been heard.

### Revision of OMB Circular No. A-76

The Office of Management and Budget announced a major revision of OMB Circular No. A-76, which governs contracting-out procedures in the federal government, and the Cost Comparison Handbook, which is used to make comparisons between federal and private costs (February 12 Federal Register, p. 6511). The proposed revision will be published in the Federal Register by April 1, 1982 for a 60 day public comment period. OMB Circular No. A-76 is of interest to both federal librarians and the private sector because among the "examples of commercial and industrial activities" listed in the current A-76 which could be done by contract with private sources are library operation and cataloging.

### Federal Register Price Skyrockets!

Effective March 29 the subscription price of the Federal Register will increase from \$75 to \$300 (a 300 percent increase), "in order to recover production and distribution costs to the Government for sales copies." The February 25 Federal Register announcement (p. 8151) also states that an alternative subscription in microform at a substantially lower price is under consideration.

### Legal-Size Paper Phaseout

At the urging of U.S. Archivist Robert Warner, the Judicial Conference of the U.S. will eliminate use of legal-size paper and, after January 1, 1983, accept only 8½x11 inch size paper in all federal courts. The Judicial Conference decision, made at its meeting last September 25 and 26, was announced briefly in the December 14, 1981 Federal Register (p. 60864) and will be published as part of the Report of the Proceedings of the Judicial Conference of the U.S.

The campaign to reduce administrative operating costs of business, industry, and government by eliminating the necessity of having both legal and letter-size paper for records and correspondence originated with the Association of Records Managers and Administrators which launched Project ELF (Eliminate Legal-size Files) in 1980. The National Archives and Records Service estimates that the federal government would save over \$1.25 million per year in paper costs alone. In addition, legal-size paper can increase postage costs, and legal-size files cost more, weigh more, and take up more space. Many libraries and archives could benefit from the cost savings in Project ELF. Eighteen states (AL, AZ, CA, CO, CT, GA, IL, KY, MN, NC, NJ, NY, OR, PA, UT, WA, WI, and WY) have already eliminated legal-size paper from their court systems.

### Baggage Liability Rules

The Civil Aeronautics Board is proposing to change its baggage liability rules in one of three ways as part of its examination of consumer protection regulations (February 4 Federal Register, pp. 5232-5237). The first option would remove all federal regulation of baggage practices. The second option would eliminate all regulation of baggage except the current minimum liability limitation of \$750. The third option would place the most significant features of the current requirements directly into CAB rules, "while removing any requirements that are unnecessary or burdensome." Under the provisions of the Airline Deregulation Act, tariffs governing domestic air transportation, the means by which the CAB currently requires reasonable practices in baggage liability, will no longer be effective as of January 1, 1983. The proposed rulemaking seeks comments on the three approaches to airline baggage practices during the transition to "sunset." Comments are due by April 5, 1982. Individuals may submit their views as consumers to Docket 40366, Civil Aeronautics Board, 1825 Connecticut Ave., N.W., Washington, D.C. 20428. For further information contact: Patricia Kennedy (202/673-5934) or Joanne Petrie (202/673-5442).

"Fly-Rights," a comprehensive guide for air passengers which includes rules on flying such as insurance, safety and reservations rights, is available free from the CAB as long as supplies last. To obtain a copy write: Publication Services, Civil Aeronautics Board, Washington, D.C., 20428. After the CAB supply is exhausted, the booklet will be available for a slight fee through the Government Printing Office.



U. S. SENATE

Committee on Labor and Human Resources

97th Congress, 2nd Session

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Committee on Education and Labor

97th Congress, 2nd Session

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American Library Association  
Washington Office  
February 1982

(See over for Subcommittees on  
Elementary, Secondary and  
Vocational Education, and  
Postsecondary Education.)

Elementary, Secondary and Vocational Education Subcommittee

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# Congressional Record

PROCEEDINGS AND DEBATES OF THE 97<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 128

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No. 20

## Senate

Sen. Barry Goldwater (R-AZ), Chairman of the Senate Communications Subcommittee, has introduced a comprehensive cable television bill (S. 2172) and scheduled hearings for April 27-30. This reprint includes Sen. Goldwater's introductory statement, the text of the bill, and a summary of its provisions. Librarians involved with cable TV are urged to react to the bill and send comments to the American Library Association Washington Office, 110 Maryland Ave., N.E., Washington, D.C. 20002, (202/547-4440).

(Page S1657)

By Mr. GOLDWATER (for himself and Mr. KASTEN):

S. 2172. A bill to amend the Communications Act of 1934; to the Committee on Commerce, Science, and Transportation.

#### CABLE TELECOMMUNICATIONS ACT OF 1982

● Mr. GOLDWATER. Mr. President, the bill I introduce today, the Cable Telecommunications Act of 1982, represents the culmination of a process that began in 1979 when I introduced legislation that contained similar provisions. Extensive hearings were held on that bill but no action was taken in the 96th Congress.

Last year, the Commerce Committee considered a number of communications bills that were passed by the Senate. Among those was S. 898, which contained several cable television provisions. However, no hearings had been held on those particular sections in S. 898. Therefore, during the floor debates on that bill, I objected to these provisions because of the commitments I had made that there would be no cable legislation without hearings. I also made it clear that I was not objecting to the substance of the cable provisions in S. 898. My amendment to delete those provisions was successful, and they were stricken from the bill.

Mr. President, this bill is the first time that a comprehensive bill has been introduced on cable television. There will be ample opportunity for public comment on its provisions, as I have steadfastly promised in the past. The subcommittee has tentatively scheduled 4 days of hearings on this bill next month: April 27, 28, 29, and 30, 1982.

Mr. President, I invite my colleagues to join in cosponsoring this bill.

Mr. President, I ask unanimous consent that this bill and a summary describing it be printed in its entirety in the RECORD, following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### S. 2172

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Cable Telecommunications Act of 1982".*

(b) The Communications Act of 1934 is amended by inserting immediately after title V the following new title:

#### "TITLE VI—CABLE TELECOMMUNICATIONS ACT

##### "FINDINGS

"Sec. 601. The Congress hereby finds that—

"(1) cable systems are engaged in interstate commerce through the origination, transmission, distribution, and dissemination of broadband telecommunications services;

"(2) the expansion and development of cable telecommunications is of primary concern to the Federal Government;

"(3) it is necessary and appropriate for the Federal Government to establish and maintain a national policy for cable telecommunications to assure the evolution of cable as a medium in its own right; and

"(4) a national and uniform policy for cable is needed to prevent the emergence of conflicting regulation and to allow the growth and development of cable as a medium which will be responsive to and serve the needs and interests of the public.

##### "PURPOSES

"Sec. 602. The purposes of this Act are to—

"(1) create a jurisdictional framework which apportions the authority to regulate cable systems between the Federal Government and each of the several States of the United States; and

"(2) allow cable systems to compete in the marketplace with other providers of telecommunications services to the public.

##### "STATEMENT OF AUTHORITY

"Sec. 603. The provisions of this title shall apply as follows:

"(1) The Commission shall have jurisdiction and exercise authority with respect to cable systems solely as specified in this title. Commission jurisdiction under this title is exclusive and no other Federal or State instrumentality or agency or any political subdivision thereof shall make or establish rules or policies regarding the matters dealt with in this title.

"(2) Any cable system shall be subject to the provisions of this title and such orders, rules, or regulations as may be adopted pursuant thereto and any Federal rule, regulation, order, or standard applicable to cable systems shall, to the extent inconsistent with the provisions of this title, be null and void.

"(3) A State, instrumentality, agency, board, commission, or authority or any political subdivision thereof may adopt or continue in force any law, rule, regulation, order, or standard affecting cable systems, unless such law, rule, or regulation, or order or standard is inconsistent with the exclusive grants of authority under this title and is not forbidden to any governmental authority under this title.

##### "DEFINITIONS

"Sec. 604. For purposes of this title, the term—

"(1) 'basic service', 'basic cable service', or 'basic subscriber service' means the retransmission of broadcast signals and any other service as determined by a cable operator;

"(2) 'broadband telecommunications' means any receipt or transmission of electromagnetic signals over one or more coaxial cables or other closed transmission medium;

"(3) 'broadcasting' means telecommunications by radio intended to be received by the public, directly or by the intermediary of relay stations;

"(4) 'cable channel' or 'channel' means that portion of the electromagnetic frequency spectrum used in a cable system for the propagation of a radio, television, or other electromagnetic signal;

"(5) 'cable operator' or 'cable system operator' means any person or persons, or an agent or employee thereof, that operates a cable system, or that directly or indirectly owns a significant interest in any cable system; or that otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

"(6) 'cable service' means the retransmission of any television or radio broadcast signal, or program origination, for distribution by cable or any other closed transmission medium to multiple subscribers;

"(7) 'cable subscriber' means any person who receives radio, television, or other electromagnetic signals distributed or disseminated by a cable operator or a channel programmer over a cable system;

(Over)

"(8) 'cable system' means a facility or combination of facilities under the ownership or control of any person or persons, which consists of a primary control center used to receive and retransmit, or to originate broadband telecommunications services over one or more coaxial cables, or other closed transmission media, from the primary control center to a point of reception at the premises of a cable subscriber, but such term does not include a facility or combination of facilities that serves only to retransmit the television signals of television broadcast stations located within the market in which such facility is located, nor shall a common carrier subject to the provisions of title II of this Act be deemed to be a cable system solely by reason of receiving or transporting broadband telecommunications services in the ordinary course of its business as a common carrier;

"(9) 'channel programmer' means any person or persons that lease, rent, or are otherwise authorized to use the facilities of a cable system for the origination of programming over a cable channel, and such term shall include a cable system operator to the extent that such operator, or person or persons under common ownership or control with such operator, is engaged in program origination;

"(10) 'closed transmission medium' or 'closed transmission media' means media having the capacity to transmit simultaneously electromagnetic signals over a common transmission path such as coaxial cable, optical fiber, wire, waveguide, or other such signal conductor or device;

"(11) 'origination' or 'program origination' means the use of a cable channel by a channel programmer to create and distribute programs such as news, public affairs, entertainment, sports, educational, informational, and religious, but such term does not include carriage of radio or television broadcast signals by a cable operator;

"(12) 'person' means an individual, partnership, association, joint stock company, trust, corporation, or any governmental authority;

"(13) 'radio or television signal' means a signal or any radio or television broadcast station, domestic or foreign, operating on a channel regularly assigned to its community, which is receivable by the general public without charge;

"(14) 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information, by means of electromagnetic transmission, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

"(15) 'telecommunications carrier' or 'carrier' means any person, including any government or quasi-government entity, which offers any telecommunications service or facilities used by any person to provide telecommunications services, except that a person engaged in broadcasting, or in providing any cable service, shall not, insofar as such person is so engaged, be deemed a carrier;

"(16) 'telecommunications service' means the offering for hire of telecommunications facilities, or of telecommunications by means of such facilities; and

"(17) 'United States' means the several States and territories, the District of Columbia, and the possessions of the United States.

#### "OWNERSHIP OR CONTROL OF CABLE SYSTEMS

"Sec. 605. (a) Except in the case of the antitrust laws of the United States and to the extent otherwise provided in subsections (b), (c), and (d) of this section, no executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, including a cable franchising authority, shall have the authority to prohibit, or otherwise regulate, the ownership of cable systems by any person.

"(b)(1) Notwithstanding the provisions of subsection (a) of this section, for the purpose of ensuring fair and equitable treatment of United States cable enterprises seeking access to markets in a foreign country, the Commission shall have authority to conduct inquiries and establish policies, rules, regulations, and requirements applicable to foreign persons from that country seeking access to domestic markets in the United States in connection with the construction, ownership, and operation of cable enterprises with a view to assuring that such United States cable enterprises are permitted access to such foreign markets upon terms and conditions which are reciprocal with the terms and conditions under which such foreign persons have access to domestic markets in the United States.

"(2) For purposes of this subsection, the term 'foreign persons' includes any individual who is not a citizen of the United States, any subsidiary (although established under the laws of the United States or any State thereof) of a corporation or other business entity which was established under the laws of a foreign country, any corporation or other business entity established under the laws of a foreign country, or any subsidiary of a corporation or other business entity established under the laws of the United States or any State thereof, if 25 percent or more of the capital stock or equivalent ownership is owned or controlled by an individual who is not a citizen of the United States or by a corporation or other business entity established under the laws of a foreign country, or any subsidiary of a corporation or other business entity established under the laws of a foreign country.

"(3) The Commission shall adopt such rules, regulations, policies, requirements, and procedures, and may impose such restrictions as it determines to be necessary or appropriate to carry out the provisions of this subsection.

"(c) Notwithstanding the provisions of subsection (a) of this section, a State or any political subdivision or agency thereof may not own or acquire an ownership interest in any cable system, unless such State, subdivision, or agency acquires such ownership or interest at not less than fair market value and not by condition of franchise unless the franchise provides for purchase at fair market value. In any case in which any such State, subdivision, or agency has or acquires any such ownership or interest in accordance with this subsection, such State, subdivision, or agency shall, in no case, own or control, directly or indirectly, any of the programming on such cable system except as provided in section 606(a)(1).

"(d) Notwithstanding the provisions of subsection (a) of this section, no telecommunications carrier shall engage in the provision of cable services in the same operating area, unless the Commission, in any particular case, shall otherwise permit and then only upon a sufficient showing that such provision by a carrier will provide significant additional media diversity and competition. In any particular case, the Commission shall require conditions which foster the purposes and policy of this Act.

"(e)(1) Notwithstanding the provision of subsection (d) of this section, telecommunications carriers serving rural areas with low population density, as defined by the Commission, may provide cable services in such areas.

"(2) The Commission shall prescribe regulations necessary to carry out the provisions of this section within the 180-day period following the date of its enactment.

#### "DEDICATION OF CHANNEL CAPACITY

"Sec. 606. (a) The Commission shall require cable systems having twenty or more television broadcast channels (120 MHz or more of bandwidth) for immediate or potential use to dedicate or set aside—

"(1) 10 percent of such channels for use by public, educational, and governmental channel programmers; and

"(2) 10 percent of such channels for use by leased channel programmer.

"(b) (1) The obligation to provide access imposed under paragraph (2) of subsection (a) of this section (relating to leased channels) shall cease upon determination by the Commission that there are reasonably available alternatives for persons desiring to provide programming service to the public in a particular geographic area or market.

"(2) IN determining whether there are reasonably available alternatives in the relevant area or market, the Commission shall consider—

"(A) the number and size of other providers of service;

"(B) the extent to which service is available from other providers;

"(C) the ability of such other providers to make such service readily available at comparable rates, terms, and conditions; and

"(D) other indicators of the extent of the competition.

"(c) The channels referred to in paragraphs (1) and (2) of subsection (a) of this section shall be made available on a first-come, first-served, nondiscriminatory basis.

"(d) Until such time as there is demand for each channel full time for its designated use, public, educational, governmental, and leased channel programming may be combined on one or more channels. To the extent time is available therefor, such dedicated channels may be used for other services.

#### "RATE REGULATION

"Sec. 607. (a) Each State or political subdivision or agency thereof, or cable franchising authority, is authorized to establish, fix, or otherwise restrict the rates, on a nondiscriminatory basis, charged for the use or sale of cable channel capacity or time on such channels referred to in paragraph (1) of subsection (a) of section 606.

"(b) Each State or political subdivision or agency thereof, or cable franchising authority, is authorized to establish, fix, or otherwise restrict the rates, on a nondiscriminatory basis, charged for basic services.

"(c) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or cable franchising authority, shall have authority to establish, fix, or otherwise restrict the rates charged channel programmers by cable system operators for the use of channels described in paragraph (2) of subsection (a) of section 606.

#### "CRIMINAL AND CIVIL LIABILITY

"Sec. 608. Nothing in this title shall be deemed to affect the criminal or civil liability of channel programmers pursuant to the law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that the cable operator shall not incur such liability for any program carried on any public, educational, governmental, or leased

channel referred to in paragraphs (1) and (2) of subsection (a) of section 606, or for any program originated by a channel programmer having no ownership affiliation with the cable system operator.

#### "CARRIAGE OF BROADCAST SIGNALS

"SEC. 609. The Commission may establish the terms and conditions respecting the carriage of radio and television broadcast signals by cable system operators.

#### "FAIRNESS DOCTRINE, EQUAL TIME, AND REASONABLE ACCESS

"SEC. 610. No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or cable franchising authority, shall require a cable operator to comply with the provisions of sections 312(a)(7) and 315 of this Act.

#### "FRANCHISE FEES

"SEC. 611. (a) The Commission shall establish reasonable ceilings for the fees to be paid to States, or any political subdivision thereof, by operators of cable systems receiving franchises from such State or political subdivision thereof and, periodically upon its own motion or upon petition, may review the appropriateness of such ceilings and make adjustments therein.

"(b) The Commission shall prescribe procedures necessary to carry out the provisions of this section within the 180-day period following the date of its enactment.

#### "PROTECTION OF SUBSCRIBER PRIVACY

"SEC. 612. (a) No person shall intercept or receive broadband telecommunications unless specifically authorized to do so by a cable system operator, channel programmer, or originator of broadband telecommunications or as may otherwise be specifically authorized by law.

"(b) In order to safeguard the right to privacy and security of broadband telecommunications, such broadband telecommunications shall be deemed to be a 'wire communication' within the meaning of section 2510(1) of title 18 of the United States Code.

"(c) In the event that there may be any difference between the provisions of this section and chapter 119 of title 18 of the United States Code, or any regulations promulgated thereunder, it is the intent of the Congress that such chapter 119 shall be controlling.

"(d) No cable operator, channel programmer, or originator of broadband telecommunications, shall disclose personally identifiable information with respect to a cable subscriber, or personally identifiable information with respect to the broadband services provided to or received by a particular cable subscriber by way of a cable system, except upon the prior written consent of the subscriber, or pursuant to a lawful court order authorizing such disclosure.

"(e) If a court shall authorize or order disclosure, the cable subscriber shall be notified of such order by the cable operator, or other person to whom such order may be directed, within a reasonable time before the disclosure is made. For the purposes of this paragraph, a reasonable period of time shall not be less than fourteen calendar days.

"(f) Any cable subscriber whose privacy is violated in contravention of this subsection, shall be entitled to recover civil damages as authorized and in the manner set forth in section 2520 of title 18 of the United States Code. This remedy shall be in addition to any other remedy available to such subscriber.

#### "TECHNICAL STANDARDS

"SEC. 613. The Commission shall ensure that cable system operators conform to technical standards necessary to promote the compatibility and interoperability of cable systems, the compatibility of the receivers and other terminal equipment connected to such systems by cable subscribers, and to prevent harmful interference to radio and television communications. No person shall manufacture, import, sell, offer for sale or lease, ship, or use devices which fall to comply with such regulations promulgated by the Commission.

#### "RECORDS

"SEC. 614. The Commission shall require the maintenance of such records by cable operators and the submission of such reports to the Commission as may be necessary and relevant to the performance of its duties and responsibilities as provided under this title or under any rule, regulation, or order adopted pursuant thereto.

#### "EQUAL EMPLOYMENT OPPORTUNITY

"SEC. 615. The Commission shall ensure and promote equal employment opportunity by cable system operators.

#### "SPORTS

"SEC. 616. (a) No cable system shall retransmit into any area within 50 miles of the home stadium of a club which is a member of a professional sports league the broadcast or any part thereof of any game involving that home club or a member club of that league unless it obtains the consent of that home club or its designee.

"(b) Nothing in this section shall prevent a cable system from retransmitting the programming of any broadcast station into an area which is located wholly within that station's 'local service area', as defined in section 111(f) of title 17, United States Code."

#### SIGNAL PIRACY

SEC. 2. Section 705 of the Communications Act of 1934 (as redesignated by section 3 of this Act) is amended (1) by designating the existing text thereof as subsection (a), and (2) by adding at the end thereof the following:

"(b)(1) Any court having jurisdiction of a civil action under this section may grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a).

"(2) Any person who violates the provisions of subsection (a) shall be liable to any person aggrieved by such violation, for damages as provided by subsection (c).

"(3) Any civil action under this section may be commenced in any United States district court of competent jurisdiction, without regard to the amount in controversy, or in any other court of competent jurisdiction.

"(c)(1)(A) Damages awarded under subsection (b)(2) shall be computed in accordance with subparagraph (B) or subparagraph (C).

"(B) The party aggrieved is entitled to recover the actual damages suffered by him as a result of the violation, any profits of the person committing the violation that are attributable to the violation and are not taken in account in computing the actual damages. In establishing such profits, the party aggrieved is required to present proof only of the gross revenue of the person committing the violation, and such person is required to prove his deductible expenses and the elements of profit attributable to factors other than the violation.

"(C) The party aggrieved may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits under subparagraph (B), an award of statutory damages for all violations involved in the action, in a sum of not less than \$250, or more than \$10,000, as the court considers just.

"(2) In a case where the party aggrieved sustains the burden of proving, and the court finds that the violation of subsection (a) was committed willfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory under paragraph (1), by an amount of not more than \$50,000. In a case where the person committing a violation sustains the burden of proving, and the court finds, that such person was not aware and had no reason to believe that his acts constituted a violation of subsection (a), the court in its discretion may reduce the award of damages to a sum of not less than \$100.

"(d)(1) Any person who violates subsection (a) willfully shall be fined not more than \$1,000 or imprisoned for not more than six months, or both.

"(2) Any person who violates subsection (a) willfully and for purposes of commercial advantage or private financial gain shall be fined not more than \$25,000 or imprisoned for not more than one year, or both, for the first such offense, and shall be fined not more than \$50,000 or imprisoned for not more than two years, or both, for any subsequent offense.

"(e)(1) No criminal proceeding shall be maintained under the provisions of this section unless it is commenced not later than three years after the cause of action arises.

"(2) No civil action shall be maintained under the provisions of this section unless it is commenced not later than three years after the claim accrues."

#### REDESIGNATION

SEC. 3. The existing title VI of the Communications Act of 1934 is redesignated as title VII, and sections 601 through 609 are redesignated as sections 701 through 709, respectively.

#### SUMMARY: CABLE TELECOMMUNICATIONS ACT OF 1982

##### SECTION 601—FINDINGS

1. Need for a national policy.

##### SECTION 602—PURPOSES

1. Establish jurisdiction.
2. Allow competition.

##### SECTION 603—STATEMENT OF AUTHORITY

1. The FCC has exclusive jurisdiction.
2. States can regulate if not inconsistent with FCC authority.

##### SECTION 604—DEFINITIONS

##### SECTION 605—OWNERSHIP OR CONTROL OF CABLE SYSTEMS

1. Generally, no ownership restrictions.
2. Foreign ownership of cable prohibited if no reciprocal rights granted to U.S. companies.
3. Municipal ownership allowed if acquired at fair market value and if no control over programming.
4. Telephone companies prohibited from providing cable in their same operating areas except in rural areas.

**SECTION 606—DEDICATION OF CHANNEL CAPACITY**

1. Cable systems with 20 or more channels must set aside:

- (a) 10% for public, educational, and governmental use; and
- (b) 10% for leased channel use.

2. The leased channel access obligation ceases when the FCC determines that there are reasonably available alternatives for programmers.

**SECTION 607—RATE REGULATION**

1. States may regulate rates for public access channels.

2. States may regulate rates for basic service.

3. No entity may regulate the rates for leased access channels.

**SECTION 608—CRIMINAL AND CIVIL LIABILITY**

1. No liability by cable operator for programs on public or leased channels.

**SECTION 609—CARRIAGE OF BROADCAST SIGNALS**

1. The FCC may require carriage of broadcast signals.

**SECTION 610—FAIRNESS DOCTRINE, EQUAL TIME, AND REASONABLE ACCESS**

1. No government entity may require a cable operator to comply with the Fairness Doctrine, equal time, or reasonable access requirements.

**SECTION 611—FRANCHISE FEES**

1. The FCC shall establish reasonable ceilings for franchise fees paid by cable operators.

**SECTION 612—PROTECTION OF SUBSCRIBER PRIVACY**

1. No unauthorized interception of cable.

2. No cable operator shall disclose personal information about a subscriber without permission.

**SECTION 613—TECHNICAL STANDARDS**

1. The FCC shall ensure that cable operators conform to technical standards.

**SECTION 614—RECORDS**

1. The FCC shall require operators to keep records.

**SECTION 615—EQUAL EMPLOYMENT OPPORTUNITY**

1. The FCC shall ensure equal employment opportunity by cable operators.

**SECTION 616—SPORTS**

1. Cable systems must blackout carriage of a professional game within 50 miles of the home club's stadium.

**SECTION 2—SIGNAL PIRACY**

1. Contains protections for programmers against signal piracy.●