

# HOUSE BILL REPORT

## HJM 4027

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### As Reported By House Committee On:

Energy & Utilities

**Brief Description:** Requesting that Congress transfer jurisdiction to regulate one-way video and audio communications to the states.

**Sponsors:** Representative Casada.

### Brief History:

#### Committee Activity:

Energy & Utilities: 2/24/95, 2/28/95 [DP].

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### HOUSE COMMITTEE ON ENERGY & UTILITIES

**Majority Report:** Do pass. Signed by 11 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Kessler, Ranking Minority Member; Kremen, Assistant Ranking Minority Member; Chandler; Huff; Mastin; Mielke; Mitchell and Patterson.

**Staff:** Margaret Allen (786-7110).

**Background:** Historically, regulation of communications services has been based on distinct technologies and purposes, with telephone companies serving as common carriers of two-way audio communications and the cable industry providing one-way audio and video communications. Federal, state, and local governmental entities regulate different aspects of telecommunications services.

For example, the Federal Communications Commission (FCC) has jurisdiction over interstate and international communications, including the cable industry. The federal Cable Television Consumer Protection and Competition Act of 1992 makes franchising of cable either a state or local matter. Cable service is provided in three tiers: (1) basic, which includes local commercial television signals, and public, educational, and governmental or "PEG" access programming, plus any additional programming a cable operator may add; (2) cable programming, which typically includes channels like ESPN and CNN; and (3) pay-per-channel or pay-per-program, which includes HBO, Showtime, and similar programming. The FCC regulates the cable programming tier, whereas the pay-per-channel tier is unregulated.

A franchising authority may regulate basic tier service. A franchising authority certified to do so by the FCC may regulate basic service tier rates. To be certified, the authority must file a written certification with the FCC stating: (1) the authority will act consistently with regulations prescribed by the FCC, (2) the authority has legal authority and sufficient resources to adopt and administer regulations consistent with those of the FCC, and (3) the procedural laws and rules that apply to its rate regulation proceedings provide a reasonable opportunity for consideration of the views of interested parties.

Any state law or local ordinance regulating the cable industry, such as laws concerning cable service, rates, facilities and equipment, consumer protection, and equal employment, that is inconsistent with federal cable laws is preempted.

A "franchising authority" is defined as any governmental agency authorized by federal, state, or local law to grant a franchise. In Washington State, however, franchising is left to local governments, with the state playing virtually no role in franchising or regulating the cable industry. The one exception concerns the Washington Utilities and Transportation Commission's (WUTC's) regulation of pole attachments in certain situations.

The state, through the WUTC, regulates local telephone service.

Technologically, it is possible for telephone companies to provide video services, and for cable television systems to provide two-way communications services. But, federal law limits the ability of companies to do so.

This situation may change, as the federal courts have held that a statute precluding telephone companies from distributing cable television services within the companies' service territories violates the First Amendment of the United States Constitution. Also, Congress currently is considering legislation that would significantly alter the existing telecommunications regulatory framework.

Assuming a regulatory environment in which telephone companies could provide video service, and cable companies could provide telephone service, such dual-service companies would be subject to three regulators under existing law: the FCC, the local franchising authority, and the WUTC.

**Summary of Bill:** The Memorial asks Congress to transfer jurisdiction to regulate cable services to the states.

**Appropriation:** None.

**Fiscal Note:** Requested on February 20, 1995.

**Testimony For:** Cable is regulated primarily at the federal level. The Governor's Telecommunication Task Force is looking at a broader picture of regulating an entire industry in the face of technological advancements such as the "telecommunications highway." The Task Force is looking at issues such as fair taxation and how to best create competitive markets. Most nuts and bolts cable regulation is at the local franchise level. Rates are established by federal guideline.

**Testimony Against:** None.

**Testified:** Bill Lawson, TCI Cablevision (neutral).