

# Table of Contents

## Volume 1

### CHAPTER 1. CABLE TECHNOLOGY

- § 1:1 Overview of treatise
- § 1:2 Origins of cable television—Early uses
- § 1:3 —Community antenna television and the communications revolution
- § 1:4 Cable television technology
- § 1:5 —The headend
- § 1:6 —The distribution network
- § 1:7 — —Digital cable; high definition signals; 3D video
- § 1:8 —Backhaul and other communications services
- § 1:9 —Institutional networks
- § 1:10 —Subscriber terminal; modems
- § 1:11 Statutory and regulatory definitions—Background of definitional process
- § 1:12 —“Cable service”
- § 1:13 —“Cable system”
- § 1:14 — —Facilities retransmitting broadcast signals only
- § 1:15 — —Facilities retransmitting broadcast and superstation signals only
- § 1:16 — —Master antenna and satellite master antenna TV systems
- § 1:17 — —Telephone companies
- § 1:18 —“Cable system”—Common carrier facilities solely providing interactive, on-demand services
- § 1:19 —“Cable system”—Electric utilities
- § 1:20 — —Facilities previously subject to FCC regulation
- § 1:21 — —Wireless cable
- § 1:22 —“Cable operator”
- § 1:23 — —System managers and passive investors
- § 1:24 — —Owners of facilities used by operators
- § 1:25 Alternatives to cable technology for video delivery
- § 1:26 —IP television
- § 1:27 —Switched video; MPEG; digital video recorders
- § 1:28 —Mobile video
- § 1:29 —Other video distribution

## **CHAPTER 2. COMPETITION TO REGULATE: THE 1992 Cable Act AND ITS PRECEDENTS**

- § 2:1 Introduction
- § 2:2 Purposes of the 1984 Cable Act
- § 2:3 —To establish a national cable communications policy
- § 2:4 —To establish franchise procedures
- § 2:5 —To provide guidance on the division of authority
- § 2:6 —To assure diversity of information sources and services
- § 2:7 —To establish an orderly process for renewal of franchises
- § 2:8 —To promote competition
- § 2:9 Understanding the purposes of the act
- § 2:10 Federal historical context for the 1984 Cable Act
- § 2:11 —Refusal to regulate cable
- § 2:12 —Assuming jurisdiction
- § 2:13 —Search for compromise
- § 2:14 —The 1972 rules
- § 2:15 —Deregulation
- § 2:16 Federal regulation at the time of the 1984 Cable Act—  
Introduction
- § 2:17 —The preemption doctrine
- § 2:18 —Initial FCC preemption policy
- § 2:19 —Federal preemption of cable signals: the *Crisp* decision
- § 2:20 The 1984 Cable Act and preemption—Background to legislative passage
- § 2:21 —Express congressional preemption
- § 2:22 — —Preemption, rate regulation, and the 1984 Cable Act
- § 2:23 — —Cross-ownership
- § 2:24 — —Public, educational, or government use channels
- § 2:25 — —Leased access channels
- § 2:26 — —Technical standards
- § 2:27 — —Franchise fees
- § 2:28 — —Carriage of broadcast and other program services
- § 2:29 — —Obscenity; indecency
- § 2:30 —Waiver and estoppel
- § 2:31 Assessment of the 1984 Cable Act
- § 2:32 Revisiting the 1984 Cable Act
- § 2:33 The 1992 Cable Act—Background to passage
- § 2:34 —Statement of policy
- § 2:35 — —Diversity of views and information
- § 2:36 — —Maximum reliance on the marketplace

## TABLE OF CONTENTS

- § 2:37 — —Ensuring expansion of cable capacity and programs
- § 2:38 — —Protecting consumers in absence of effective competition
- § 2:39 — —Reducing “undue market power”
- § 2:40 —Date of enactment and effective date
- § 2:41 Implementing the 1992 Cable Act; FCC organization and practice

## CHAPTER 3. THE FRANCHISE: ESTABLISHMENT, ENFORCEMENT, MODIFICATION

- § 3:1 Overview
- § 3:2 —Federal history
- § 3:3 —Structure of federal law
- § 3:4 —Sources of the franchise grant power: local authority
- § 3:5 — —Home rule
- § 3:6 — —Police powers
- § 3:7 — —Specific authority to control streets and rights-of-way
- § 3:8 — —Express delegation of power over cable television
- § 3:9 State regulation
- § 3:10 —Comprehensive approaches
- § 3:11 — —Preemption of local franchising
- § 3:12 — —Local franchising permitted
- § 3:13 — —Other state approaches
- § 3:14 — —State agency functions
- § 3:15 Authority to grant a franchise—What is a franchise
- § 3:16 —Attributes of a franchise
- § 3:17 —When is a franchise mandatory
- § 3:18 —Who may grant a franchise
- § 3:19 —Prohibition on exclusive franchises
- § 3:20 —FCC authority over franchising
- § 3:21 —Nondiscriminatory and universal service
- § 3:22 —Limitation of franchising authority liability
- § 3:23 Rights-of-way and easements in franchising
- § 3:24 —Rights to construct over public rights-of-way
- § 3:25 —Rights to easements
- § 3:26 — —Rules of construction
- § 3:27 — —Apportionability
- § 3:28 — — —Inference from other permitted uses
- § 3:29 — — —Inference from alienability of easements
- § 3:30 — —Effect of Cable Act on right to easements
- § 3:31 Enforceability of franchise provisions
- § 3:32 —Enforcement
- § 3:33 —Franchises in effect on or before December 29, 1984

## CABLE TELEVISION AND OTHER NONBROADCAST VIDEO

- § 3:34 —Franchises granted after December 29, 1984
- § 3:35 —“Establishment or operation” of a cable system
- § 3:36 —Distinction between request for proposal and enforcement authority
- § 3:37 —Enforcement of video programming requirements
- § 3:38 —Notice of programming changes
- § 3:39 Modification of franchise obligations
- § 3:40 —The federal franchise modification standard
- § 3:41 —Franchise obligations that can be modified
- § 3:42 —Modification of obligations relating to facilities and equipment
- § 3:43 —“Commercial impracticability”
- § 3:44 —Modification of program services
- § 3:45 —Modification of access services
- § 3:46 —Problems in contract modification
- § 3:47 —Modifications outside the act
- § 3:48 —Unilateral modification by the Franchising Authority
- § 3:49 Franchising and the antitrust laws
- § 3:50 —Background
- § 3:51 —The *Boulder* decision
- § 3:52 —Antitrust and exclusive franchising
- § 3:53 —Damages for antitrust violations
- § 3:54 —Overbuilds—“Natural monopolies” and de facto exclusive franchises
- § 3:55 — —Municipally owned franchises
- § 3:56 Regulation of principal franchise provisions—  
Introduction
- § 3:57 —Balancing precision and flexibility
- § 3:58 —Authority to amend or renegotiate franchises
- § 3:59 —System design and services; generally
- § 3:60 — —Interactive capability
- § 3:61 — —Interconnection
- § 3:62 —Technical service quality
- § 3:63 — —Hookups and disconnects
- § 3:64 —Types of program services
- § 3:65 —Ownership provisions
- § 3:66 —Construction—General provisions
- § 3:67 — —Timetable
- § 3:68 — —Performance bond, security deposits, and other insurance
- § 3:69 — —Areas served—Division of cities
- § 3:70 — — —Geographic extensions of service
- § 3:71 —Franchise duration
- § 3:72 — —Basis for choice of franchise term
- § 3:73 — —Periodic review
- § 3:74 —Rates
- § 3:75 —Subscriber privacy

## TABLE OF CONTENTS

- § 3:76 —Consumer complaints
- § 3:77 —Enforcement of franchise terms and Cable Act provisions
- § 3:78 —Private enforcement of franchise terms and Cable Act provisions
- § 3:79 —Agreements to arbitrate
- § 3:80 —Validity of franchise
- § 3:81 —Renewal of franchise
- § 3:82 Amortization of franchises
- § 3:83 Nonfranchised right to serve

## CHAPTER 4. OWNERSHIP OF CABLE SYSTEMS

- § 4:1 Introduction
- § 4:2 Section 613 of the Cable Act—A summary
- § 4:3 The rationale for the rules
- § 4:4 —Intermedia industry structure
- § 4:5 —Intramedia multiple system ownership
- § 4:6 The rules
- § 4:7 —Cross-ownership—Restrictions on cross-ownership of cable systems and local broadcast stations
- § 4:8 — —Restrictions on cross-ownership of cable systems and national television networks
- § 4:9 — —Restrictions on cross-ownership of cable systems and newspapers
- § 4:10 — —Telephone companies and cable operators
- § 4:11 — —Cross-ownership of other media
- § 4:12 — —Multipoint distribution system licenses; SMATVs
- § 4:13 — —Restrictions on cross-ownership of cable systems and open video systems
- § 4:14 — —Power companies
- § 4:15 —Municipal and public ownership
- § 4:16 —Foreign ownership allowed
- § 4:17 —Transfer of ownership
- § 4:18 —Horizontal, vertical limits
- § 4:19 Rule exemptions for small systems
- § 4:20 The rules—Attribution
- § 4:21 —Other ownership limits
- § 4:22 Merger review; developments
- § 4:23 Bankruptcy

## CHAPTER 5. CABLE OPERATIONS

- § 5:1 Introduction
- § 5:2 Pole attachment rules—Introduction
- § 5:3 —Substantive problems—Background
- § 5:4 — —Pole layout—Placement of lines and facilities

## CABLE TELEVISION AND OTHER NONBROADCAST VIDEO

- § 5:5 — —Nonrecurring costs—Preconstruction surveys  
and “make ready” work
- § 5:6 — — —Postconstruction rearrangements
- § 5:7 —Federal standard for access to poles and conduits
- § 5:8 — —Certification of state jurisdiction
- § 5:9 — —Right of access to poles
- § 5:10 — —Pole attachment rates
- § 5:11 — —Conduit rates
- § 5:12 — —Constitutionality of the pole attachments law
- § 5:13 — — —Other pole attachment contract issues
- § 5:14 —State jurisdiction
- § 5:15 —Antitrust issues
- § 5:16 —Procedural issues
- § 5:17 Access to multiple dwelling units
- § 5:18 —Access under the Cable Act
- § 5:19 —Access under state statutes
- § 5:20 — —Two types of access
- § 5:21 — —Constitutionality—Fifth Amendment “taking”
- § 5:22 — — —First Amendment challenges
- § 5:23 —Access under local ordinances
- § 5:24 —Access under the antitrust laws
- § 5:25 Federal regulation of technical aspects of cable  
system operation
- § 5:26 —Registration and other filing requirements
- § 5:27 — —Broadband reporting
- § 5:28 —System performance standards—Subscriber quality  
standards
- § 5:29 — —Signal leakage limits
- § 5:30 —Antenna construction
- § 5:31 —Public inspection and technical inspection files
- § 5:32 —Cable terminal devices—“White spaces” devices
- § 5:33 Cable television relay service (CARS)
- § 5:34 —Uses
- § 5:35 —Eligibility for license
- § 5:36 —Licensing
- § 5:37 —Assignments and transfers
- § 5:38 —Operating requirements—Personnel
- § 5:39 — —Recordkeeping
- § 5:40 — —Power
- § 5:41 — —Antennas
- § 5:42 — —Installation and repairs
- § 5:43 — —Technical modifications
- § 5:44 Aeronautical frequency coordination—Regulatory  
background
- § 5:45 —Operating rules—Threshold: Average power below  
 $10^{-4}$  watts
- § 5:46 — —Permissible power level in aeronautical bands

## TABLE OF CONTENTS

§ 5:47	— —Operation in aeronautical radiocommunications bands
§ 5:48	— —Operation in navigation bands
§ 5:49	— —Basic signal leakage performance standard
§ 5:50	— —Monitoring requirements
§ 5:51	— —Deadline for compliance
§ 5:52	— —Enforcement
§ 5:53	— —Waiver under old rules
§ 5:54	— —Notification requirements
§ 5:55	Emergency alert system
§ 5:56	Equal employment opportunity regulation— Introduction—FCC policy
§ 5:57	—The 1984 Act—In general
§ 5:58	—Scope of EEO under the 1984 Act—Who is covered: entities and employment units; SMATV
§ 5:59	— —Definition of employment unit
§ 5:60	—Goals of the 1984 Act—In general
§ 5:61	— —EEO programs required
§ 5:62	—Filing requirements—EEO program filing requirement deleted
§ 5:63	— —Annual report
§ 5:64	— — —Reporting of full-time employees
§ 5:65	— — —Full-time job categories
§ 5:66	— — —Part-time reporting
§ 5:67	— — —Reporting of recruitment efforts
§ 5:68	— —Annual certification
§ 5:69	— —Investigation report
§ 5:70	— —Multiple system operator reporting
§ 5:71	— —Public inspection
§ 5:72	—Complaints
§ 5:73	—FCC EEO enforcement—The 1984 Act and H.R. 4103
§ 5:74	— —FCC EEO enforcement
§ 5:75	— —Recordkeeping and file maintenance
§ 5:76	—Sanctions—Substantial failure to comply
§ 5:77	— —Failure to “make best efforts”
§ 5:78	— —Section 1.80 of the Commission’s Rules
§ 5:79	— —Notice prior to forfeiture
§ 5:80	— —Failure to pay forfeiture
§ 5:81	— —Nonforfeiture commission remedies
§ 5:82	— —State and local remedies
§ 5:83	Theft of cable service—Introduction
§ 5:84	—Liability under antiwiretap laws
§ 5:85	—Liability under section 605
§ 5:86	—Liability under section 633 of the Cable Act— Rationale
§ 5:87	— —Liability for personal use

## CABLE TELEVISION AND OTHER NONBROADCAST VIDEO

- § 5:88 — —Liability for commercial advantage
- § 5:89 — —Civil remedies
- § 5:90 —State laws
- § 5:91 —Industry amnesty alternative—Policy
- § 5:92 — —The offer
- § 5:93 — —Success
- § 5:94 Cable television home security systems—Background
- § 5:95 —Right to police/fire station interconnection
- § 5:96 —“False alarm” regulation and liability
- § 5:97 —Antitrust issues
- § 5:98 Consumer protection and customer service regulation
- § 5:99 —Telemarketing
- § 5:100 Inside wiring
- § 5:101 Compatibility of consumer electronics equipment;  
signal encryption
- § 5:102 Navigation devices (set-top boxes)
- § 5:103 —Analog devices and the decoder interface
- § 5:104 —Compatibility with digital receivers (TV sets)
- § 5:105 Set-top box energy standards—Copy protection  
encoding rules; broadcast flag
- § 5:106 Smart TVs; Internet-enabled devices
- § 5:107 Set-top box energy standards
- § 5:108 Closed captioning
- § 5:109 Video description
- § 5:110 Loud commercials
- § 5:111 Subscriber agreement disputes

## CHAPTER 6. REGULATION OF CABLE PROGRAM CONTENT: CONSTITUTIONAL AND STATUTORY CONCERNS

- § 6:1 Introduction
- § 6:2 —Structural regulation
- § 6:3 —Discretionary content regulation
- § 6:4 Overview of the Cable Act and local authority over  
programming
- § 6:5 —Section 611—Public, educational, and government  
channels
- § 6:6 —Section 612—Commercial Use by Programmers  
Unaffiliated with the cable operator (CUPU)
- § 6:7 —Sections 614 and 615—Broadcast channels
- § 6:8 —Section 621—Nonpreemption
- § 6:9 —Section 623—Rates and programs
- § 6:10 —Section 624—Franchises
- § 6:11 —Section 625—Franchise modifications
- § 6:12 —Section 626—Renewals
- § 6:13 —Obscenity and indecency



## TABLE OF CONTENTS

§ 6:14	—Section 624—Preemption
§ 6:15	The constitutional standard for regulating cable— Competing claims
§ 6:16	—Cable operators as electronic editors
§ 6:17	—Scarcity and public rights-of-way
§ 6:18	—Localism, local broadcasters, and cross-subsidies
§ 6:19	—Structural regulation and questions of definition
§ 6:20	—The intermediate First Amendment standard
§ 6:21	— — <i>Turner Broadcasting</i> and cable regulation
§ 6:22	— —Content-neutrality
§ 6:23	— —Important governmental interests
§ 6:24	— —Advancing the interests
§ 6:25	— — <i>Denver Area</i> and beyond
§ 6:26	—Waiver of constitutional rights
§ 6:27	—State action
§ 6:28	Public, Educational, and Government (PEG) channels—Introduction
§ 6:29	—History of PEG channels
§ 6:30	—The Cable Act and access channels
§ 6:31	— —PEG channels—Defined
§ 6:32	— —Public access—Defined
§ 6:33	— —Financing of PEG channels
§ 6:34	— —PEG channels and institutional networks
§ 6:35	— —Rules for cable operator use of PEG channels
§ 6:36	— —Modification of PEG-related commitments
§ 6:37	—PEG channels and franchise renewals
§ 6:38	Realignment of PEG channels
§ 6:39	Public, Educational, and Government (PEG) channels—Digital PEG channels
§ 6:40	—Content control and other regulation of PEG channels
§ 6:41	—Controversial access programming
§ 6:42	—Administration of PEG channels
§ 6:43	Leased access channels
§ 6:44	—Background—Early policy studies
§ 6:45	— —FCC action, judicial reaction, other options
§ 6:46	—Section 612 commercial leased channels
§ 6:47	— —How many to set aside
§ 6:48	— —The “36/70/70” threshold
§ 6:49	— —Leased access rates and other requirements
§ 6:50	— —Enforcement of leased access provisions
§ 6:51	Cable carriage of broadcast channels
§ 6:52	—History of must-carry rules; <i>Quincy</i> decision
§ 6:53	—The 1992 must-carry rules
§ 6:54	— —Commercial signals—Number of required commercial channels
§ 6:55	— — —Qualified commercial broadcasters

# CABLE TELEVISION AND OTHER NONBROADCAST VIDEO

- § 6:56 — — — Duplicative stations
- § 6:57 — — — Home-shopping stations
- § 6:58 — — — Deletion and repositioning
- § 6:59 — — — Manner of carriage
- § 6:60 — — — Payment for carriage prohibited
- § 6:61 — — — Enforcement
- § 6:62 — — Low-power stations
- § 6:63 — — Noncommercial educational stations
- § 6:64 — — — Number of required noncommercial educational channels
- § 6:65 — — — Qualified noncommercial educational broadcasters
- § 6:66 — — — Carriage requirements for noncommercial stations
- § 6:67 — — — Payment for carriage prohibited
- § 6:68 — — — Enforcement for noncommercial stations
- § 6:69 — — A/B switch
- § 6:70 — Retransmission consent
- § 6:71 — Network nonduplication and syndicated exclusivity rules
- § 6:72 — — Network nonduplication rules—Television stations qualifying for protection
- § 6:73 — — — Definition of network programming; degree of exclusivity
- § 6:74 — — — Notification procedures
- § 6:75 — — — Exceptions
- § 6:76 — — — Canadian prerelease of network programs
- § 6:77 — — Syndicated exclusivity rules—Who may claim protection
- § 6:78 — — — Geographic zone; degree of exclusivity
- § 6:79 — — — Notification procedures
- § 6:80 — — — Exceptions
- § 6:81 — Digital must carry
- § 6:82 Regulation of broad categories of programming
- § 6:83 Regulation of political, lottery, and sports programming—Political broadcasting rules
- § 6:84 — Political advertisements
- § 6:85 — Equal access for political candidates
- § 6:86 — Reasonable access
- § 6:87 — The fairness doctrine; generally
- § 6:88 — The fairness doctrine—Personal attacks; political editorial rules
- § 6:89 — Programming covered by political content rules
- § 6:90 — Political programming on access channels
- § 6:91 — — Public access channels
- § 6:92 — — Commercial leased access channels
- § 6:93 — Lotteries

## TABLE OF CONTENTS

§ 6:94	—Sports blackout rules
§ 6:95	Commercial speech; generally
§ 6:96	—Advertising during children’s programming
§ 6:97	—FCC-FTC jurisdiction
§ 6:98	—The fairness doctrine and cable advertising
§ 6:99	—Classified advertising
§ 6:100	—“Cooling off” regulations applied to cable
§ 6:101	—Cable operator liability for advertised products— Substantiation
§ 6:102	— —Content
§ 6:103	— —Warranty for products advertised
§ 6:104	—Sponsorship identification
§ 6:105	—Self-regulation
§ 6:106	Cable obscenity and indecency—The law of obscenity—Generally
§ 6:107	—Indecency law; generally
§ 6:108	— —Pervasiveness or intrusiveness
§ 6:109	— — —In the home vs. in public
§ 6:110	— — —Broadcasting vs. other media
§ 6:111	— —Accessibility to children
§ 6:112	—Regulation of cable obscenity and indecency— History
§ 6:113	— —Cable obscenity
§ 6:114	— —Cable indecency
§ 6:115	—Obscenity and indecency amendments
§ 6:116	— —Premium channel previews
§ 6:117	— —Scrambling
§ 6:118	— —Leased and PEG access
§ 6:119	— — —Operator immunity for access programming
§ 6:120	— — —Operator censorship of access channels
§ 6:121	— — — —PEG access provisions
§ 6:122	— — — —Leased access provisions
§ 6:123	— — — —Constitutional perils of operator censorship
§ 6:124	—The continuing battle over indecency and violence
§ 6:125	Defamation and related speech injuries
§ 6:126	Antitrust issues
§ 6:127	—The antitrust laws
§ 6:128	—Program suppliers
§ 6:129	— —The relevant market
§ 6:130	— —Price fixing
§ 6:131	— —Refusal to deal
§ 6:132	— —Tying
§ 6:133	—Wholesaler networks
§ 6:134	— —The relevant market
§ 6:135	— —Refusal to deal
§ 6:136	— —Tying
§ 6:137	—Local distribution retailers

## CABLE TELEVISION AND OTHER NONBROADCAST VIDEO

- § 6:138 — —The relevant market
- § 6:139 — —Refusal to deal
- § 6:140 — — —Monopoly intent
- § 6:141 — — —Essential facility
- § 6:142 — — —Strict separation/divestiture proposals
- § 6:143 —The Time Warner and AT & T merger and a snapshot of the telecommunications marketplace
- § 6:144 —Local distribution retailers—Tying
- § 6:145 — —Price fixing
- § 6:146 —Cable operators as antitrust plaintiffs and antitrust defendants
- § 6:147 —Cable advertising
- § 6:148 The battle over regional sports networks
- § 6:149 Access to satellite programming services
- § 6:150 —Prohibition on discrimination
- § 6:151 —Limitation on exclusive contracts
- § 6:152 —Procedures for challenging exclusive contracts
- § 6:153 —Regional Sports Networks
- § 6:154 —High definition programming
- § 6:155 —Effect of *Liberty Media* and *Comcast* merger conditions
- § 6:156 —Timing for proceedings
- § 6:157 —Discovery
- § 6:158 —Petitions for Exclusivity
- § 6:159 Unilateral refusal to deal: exclusive arrangements vs. exclusive contracts
- § 6:160 Access to terrestrial programming services
- § 6:161 Notice of change in programming

## CHAPTER 7. REGULATION OF SUBSCRIBER RATES

- § 7:1 Introduction
- § 7:2 The era of deregulation
- § 7:3 Reregulation of rates for basic service
- § 7:4 —Definition of effective competition
- § 7:5 — —Case development
- § 7:6 Deregulation of basic rates due to provider competition
- § 7:7 Reregulation of rates for basic service—What constitutes the basic tier
- § 7:8 —“Reasonableness” standard
- § 7:9 — —Unitary approach to basic and “cable programming service”
- § 7:10 —Determining rates for regulated tiers
- § 7:11 — —Benchmark approach
- § 7:12 — — —Franchising authority regulation of basic rates
- § 7:13 — —Maximum permissible rates

## TABLE OF CONTENTS

§ 7:14	— — —Forms; annual rate increases; process
§ 7:15	— — —Refund deferral
§ 7:16	— — —Franchising authority rate determinations; refunds
§ 7:17	— — —Appeals to FCC
§ 7:18	— — —FCC regulation of basic rates
§ 7:19	— — —Cost-of-service showings
§ 7:20	— — —Composition of rate base; treatment of intangibles
§ 7:21	— — —Allocations of costs; affiliate transactions
§ 7:22	— — —Rate of return
§ 7:23	— — —Permitted expenses; depreciation
§ 7:24	— — —Taxes
§ 7:25	— — —Hardship relief
§ 7:26	— — —Election between cost of service and benchmarks
§ 7:27	— — —Social contracts; experimental proposals
§ 7:28	— — —Rates for equipment; Wire maintenance contracts
§ 7:29	— — —Notice to subscribers
§ 7:30	Increases to regulated rates
§ 7:31	— — —External cost pass-throughs; network upgrades
§ 7:32	— — —Adding or deleting channels
§ 7:33	— — —Regulatory fees; Franchise requirements
§ 7:34	Certification of local authority to regulate basic rates; certification appeals
§ 7:35	Regulation of rates beyond the basic tier; cable programming service
§ 7:36	— — —Role of the FCC
§ 7:37	— — —Review of bureau decisions
§ 7:38	— — —Timing of complaints
§ 7:39	— — —A la carte offerings
§ 7:40	— — —Case development
§ 7:41	— — —Rate approval under <i>Tel-Com</i>
§ 7:42	Other rate regulation issues—Discrimination in cable rates; senior discounts; uniform rate structure
§ 7:43	— — —Equipment for hearing impaired subscribers
§ 7:44	— — —Negative-option billing; state regulation of rates
§ 7:45	— — —Buy-through requirements
§ 7:46	— — —Preexisting rate regulation agreements
§ 7:47	— — —Evasion of rate regulation
§ 7:48	— — —Information and reports
§ 7:49	— — —Billing statements
§ 7:50	— — —Advertising of rates
§ 7:51	— — —Bulk discounts
§ 7:52	— — —Small systems
§ 7:53	— — —Definition
§ 7:54	— — —FCC rate relief mechanisms

- § 7:55 —Late fees
- § 7:56 Rate deregulation; à la carte

## CHAPTER 8. FRANCHISE RENEWAL

- § 8:1 Introduction
- § 8:2 Federal law and franchise renewal
- § 8:3 Initial stage of the renewal procedure
- § 8:4 —Initiation of the inquiry
- § 8:5 —Failure to request a Section 626(a) proceeding
- § 8:6 —Scope of the initial inquiry under Section 626(a)(1) and (2)
- § 8:7 —Initial review of cable operator performance
- § 8:8 —Legal requirements of a Section 626(a) proceeding
- § 8:9 Submission of a proposal for renewal—Submission
- § 8:10 —Timing of submission and review of proposal
- § 8:11 —Content of proposal
- § 8:12 —Public notice
- § 8:13 —Renewal of franchise without a hearing
- § 8:14 Renewal hearing
- § 8:15 —Preliminary assessment of nonrenewal
- § 8:16 —Failure to request a hearing
- § 8:17 Scope of inquiry in the formal proceeding
- § 8:18 —Substantial compliance with the material terms of the existing franchise and applicable law
- § 8:19 — —Failure to obtain modification
- § 8:20 — —Noncompliance with terms rendered unenforceable by statute
- § 8:21 — —Preemption by the FCC
- § 8:22 — —Notice and opportunity to cure
- § 8:23 — —Waiver by franchising authority of right to object
- § 8:24 —Quality of operator's past service
- § 8:25 — —Comparison of Section 626(a)(2) to Sections 626(c)(1)(A) and (c)(1)(B)
- § 8:26 — —“In light of community needs”
- § 8:27 — —“Financial, legal, and technical ability” of the operator to provide service
- § 8:28 —Reasonableness of renewal proposal
- § 8:29 —Use of competing proposals in renewal process
- § 8:30 —Process required in the formal hearing
- § 8:31 —Modification of the renewal proposal
- § 8:32 —Property expectation in renewal
- § 8:33 —Effect of delay in renewal process
- § 8:34 Judicial review—Parties with standing to seek review
- § 8:35 —Grounds and procedure for appeal
- § 8:36 —Scope of judicial review—Failure to comply with procedural requirements
- § 8:37 — —Judicial review of denial of application

## TABLE OF CONTENTS

§ 8:38	Informal renewals
§ 8:39	Public notice and opportunity for comment in renewal process
§ 8:40	Relationship between formal and informal renewal
§ 8:41	Power of authority to acquire franchise
§ 8:42	—Purchase of system—Contractual provision
§ 8:43	— —Contract price
§ 8:44	— —Section 627
§ 8:45	—The first amendment and renewals
§ 8:46	Waiver of statutory renewal rights
§ 8:47	Negotiated renewal compromise
§ 8:48	—The initial positions
§ 8:49	—Some examples
§ 8:50	Antitrust issues
§ 8:51	—Causation and injury
§ 8:52	—Defenses
§ 8:53	Revocation

## CHAPTER 9. CABLE AND COPYRIGHT

§ 9:1	Introduction
§ 9:2	Retransmission of broadcast signals—History—Better reception of local signals
§ 9:3	—Importing distant nonnetwork signals
§ 9:4	—The FCC and judicial action
§ 9:5	—The consensus agreement
§ 9:6	—The 1976 Copyright Act
§ 9:7	—Deregulation
§ 9:8	—Reregulation
§ 9:9	Present rate structure
§ 9:10	—Must carry and the compulsory license
§ 9:11	—Structure of rate making
§ 9:12	—Royalty distribution
§ 9:13	Computation of compulsory copyright license fee—Basic elements
§ 9:14	—Gross receipts
§ 9:15	— —Distant vs. Local signals
§ 9:16	— —Unbundling tiers
§ 9:17	—Permitted signal fees for smaller systems
§ 9:18	—Permitted signals fee for larger (form 3) systems
§ 9:19	Definition of “cable system”; subscriber groups; phantom signals
§ 9:20	Computation of compulsory copyright license fee—Permitted signals fee for larger (form 3) systems—Distant signal equivalent (DSE)
§ 9:21	— —Modifications to the DSE
§ 9:22	— — —Lack of activated channels (LAC); shared use
§ 9:23	— — —Substituted distant signals

- § 9:24 — — —DSEs for systems carrying substituted and substitutable signals
- § 9:25 — — —What constitutes a “permitted signal”
- § 9:26 — — —Market size as a factor
- § 9:27 — — —Specialty, waived, and substituted stations
- § 9:28 — — —Computation of permitted signals fee
- § 9:29 — — —Not permitted signals fee
- § 9:30 — — —Syndicated exclusivity surcharge
- § 9:31 Superstations and satellite carriers—Superstations
- § 9:32 — — —Passive carrier exemption from copyright liability
- § 9:33 Compulsory copyright for direct broadcast satellite—SHVIA and its progeny
- § 9:34 Copyright issues concerning nonbroadcast programming—Satellite networks
- § 9:35 — — —Music rights
- § 9:36 — — —Leased or public access channel users
- § 9:37 Cable and copyright: an appraisal
- § 9:38 Digital cable copyright issues
- § 9:39 — — —Digital video recorders; who is entitled to compulsory copyright

## CHAPTER 10. FRANCHISE FEES AND TAXES

- § 10:1 Introduction
- § 10:2 History
- § 10:3 Fee regulation under the Cable Act—Authority to impose a franchise fee
- § 10:4 — — —Itemization of fee on customer’s bill
- § 10:5 — — —Applicability to existing franchises
- § 10:6 — — —Scope of the 5% limitation
- § 10:7 — — —Gross revenues
- § 10:8 — — —Fees collected from leased channels
- § 10:9 — — —FCC jurisdiction over franchise fee disputes
- § 10:10 Computing the franchise fee
- § 10:11 — — —Inclusions into the franchise fee
- § 10:12 — — —Taxes of general applicability
- § 10:13 — — —Sales and use taxes
- § 10:14 — — —Gross receipts taxes
- § 10:15 — — —Real and personal property taxes
- § 10:16 — — —Amusement taxes
- § 10:17 — — —Possessory interest taxes
- § 10:18 — — —Utility and telecommunications taxes
- § 10:19 — — —Business privilege tax
- § 10:20 — — —Special exemptions
- § 10:21 — — —Payments related to public, government, and educational access channels—Franchises signed before October 29, 1984



## TABLE OF CONTENTS

- § 10:22 — —Franchises signed after October 29, 1984
- § 10:23 —In kind expenditures
- § 10:24 Federal regulatory fees
- § 10:25 Fees for telecommunications services
- § 10:26 Attorney's fees

## Volume 2

### CHAPTER 11. CABLE TELEVISION AND THE TELEPHONE COMPANIES

- § 11:1 Introduction
- § 11:2 Entry by cable into local telephone service; generally
- § 11:3 —What is local service: Access and transport; pre-1996 regulation
- § 11:4 —Internet access
- § 11:5 —Interconnected Voice over Internet Protocol (VoIP)
- § 11:6 VoIP and access to phone numbers
- § 11:7 Non-interconnected VOIP
- § 11:8 Entry by cable into local telephone service;  
generally—1996 Act: removal of barriers to entry
- § 11:9 — —No local franchising of telecommunications  
service
- § 11:10 —Jurisdiction—Federal and state jurisdiction under  
section 152
- § 11:11 — —1996 reformulation of jurisdiction
- § 11:12 — —Local franchising authority's power to regulate  
telecommunications services; Sec. 253 issues
- § 11:13 —Definition and obligations of a cable operator in  
providing telecommunications
- § 11:14 — —As a cable operator
- § 11:15 — —As a telecommunications carrier
- § 11:16 — — —Broadband universal service obligations;  
eligibility
- § 11:17 — —As a local exchange carrier (LEC)
- § 11:18 — — —Resale
- § 11:19 — — —Number portability
- § 11:20 — — —Dialing parity
- § 11:21 — — —Access to rights-of-way
- § 11:22 — — —Reciprocal compensation; interstate and  
intrastate access charges
- § 11:23 — — —Infrastructure sharing
- § 11:24 — —As compared to incumbent LECs
- § 11:25 —Operations—As VoIP provider
- § 11:26 Service discontinuance
- § 11:27 Entry by cable into local telephone service;  
generally—Operations—As VoIP provider—CALEA

## CABLE TELEVISION AND OTHER NONBROADCAST VIDEO

- § 11:28 — — —FCC registration
- § 11:29 — — —Disability access
- § 11:30 — — —Regulatory fees; Taxation
- § 11:31 — — —E911
- § 11:32 — — —Universal Service Fund
- § 11:33 Network outage reporting
- § 11:34 Entry by cable into local telephone service;  
generally—Operations—As VoIP provider—  
Customer privacy
- § 11:35 — — —Interconnection and long-distance entry for Bell  
companies
- § 11:36 — — —Enforcement of interconnection agreements
- § 11:37 — — —FCC interconnection rules
- § 11:38 — — —Interconnection
- § 11:39 — — —Rural telephone companies
- § 11:40 — — —Unbundled elements
- § 11:41 — — —Pricing of elements, resale
- § 11:42 — — —Developments
- § 11:43 Provision of video by telephone companies—Pre-1996  
Act—Effect of AT&T divestiture on telephone  
company entry
- § 11:44 —Effect of *Computer Inquiry II* on telephone  
company entry into cable
- § 11:45 —Cross-ownership limitations under the Cable Act
- § 11:46 —Post-1996 Act—History
- § 11:47 — — —Forms of entry generally
- § 11:48 — — —Developments
- § 11:49 — — —Open video systems as hybrid
- § 11:50 — — —FCC certification process; franchising
- § 11:51 — — —Elements of certificate
- § 11:52 — — —Channel allocation and discrimination
- § 11:53 — — —Gateways and marketing discrimination
- § 11:54 — — —Rate regulation
- § 11:55 — — —OVS operator restrictions when “demand  
exceeds supply”
- § 11:56 — — —Channel sharing
- § 11:57 — — —Must-carry and PEG channels
- § 11:58 — — —Remedies
- § 11:59 — — —Copyright and program exclusivity
- § 11:60 Cable systems and the long-distance marketplace
- § 11:61 Municipal authority over telephone companies
- § 11:62 —Rights-of-way/telecommunications franchising
- § 11:63 Mergers and buyouts between cable and telephone  
companies
- § 11:64 Cable and wireless service

## TABLE OF CONTENTS

### **CHAPTER 12. PRIVACY AND INTERACTIVE SERVICES**

- § 12:1 Privacy and interactive cable television; video on demand
- § 12:2 The concept of privacy; generally
- § 12:3 —Constitutional privacy protections
- § 12:4 — —The right to use services free from intrusion; state action
- § 12:5 — —Subscriber's right to protect the content of cable services
- § 12:6 The common law
- § 12:7 —Appropriation of another's name or likeness for user's advantage
- § 12:8 —Public disclosure of private facts
- § 12:9 —"False light" tort
- § 12:10 —Intrusion
- § 12:11 —Defenses to the common law right of privacy
- § 12:12 Federal privacy protection—The Cable Communications Policy Act of 1984
- § 12:13 —Notice rights of subscribers
- § 12:14 —Rights against unauthorized collection of data
- § 12:15 —Rights against unauthorized disclosure of data
- § 12:16 —Remedies
- § 12:17 —Critique
- § 12:18 —Wiretap law
- § 12:19 —Other federal efforts
- § 12:20 State and local privacy protection; generally
- § 12:21 —Local regulation by industry codes
- § 12:22 —State privacy statutes and regulations
- § 12:23 Interactive advertising

### **CHAPTER 13. SATELLITE MASTER ANTENNA TELEVISION SYSTEMS (SMATV)**

- § 13:1 Description of SMATV
- § 13:2 Definition of SMATV—SMATV under the 1984 Act—SMATV and "cable system" distinguished
- § 13:3 —SMATV and the EEO provisions
- § 13:4 —The changing line between SMATV and cable systems
- § 13:5 SMATV interconnection—Community antenna relay service (CARS) licenses
- § 13:6 —Infrared interconnection
- § 13:7 —Operational fixed services interconnection
- § 13:8 Federal regulation of SMATV—MATV origins
- § 13:9 —Programming obligations
- § 13:10 —EEO provisions of the Cable Act

- § 13:11 —Ownership restrictions
- § 13:12 Municipal authority to regulate SMATV—  
Registration and licensing: Federal preemption
- § 13:13 —Zoning and safety considerations
- § 13:14 —SMATV franchises
- § 13:15 Competition between cable and SMATV—The right to  
compete: SMATV vs. cable
- § 13:16 —SMATV access to satellite programming: Antitrust  
considerations
- § 13:17 —Local interests in franchising
- § 13:18 Copyright obligations
- § 13:19 —Hotel video systems

## CHAPTER 14. SATELLITE VIDEO DELIVERY

- § 14:1 Introduction
- § 14:2 History of satellite communications—The first  
satellites
- § 14:3 —Satellites currently in use
- § 14:4 — —Early international developments
- § 14:5 — —Early domestic developments
- § 14:6 — —Recent developments
- § 14:7 Earth stations—Uplinks: description
- § 14:8 —Uplinks: regulation
- § 14:9 —Downlinks: description
- § 14:10 —Downlinks: regulation
- § 14:11 —Unified uplink and downlink
- § 14:12 Federal regulation of video satellite transponders—  
Market for video transponders
- § 14:13 —Orbital locations—Two-degree (2°) spacing
- § 14:14 — —Assignment of particular slots
- § 14:15 — —Expansion satellite locations
- § 14:16 —Radio regulation of fixed-satellite services (space  
stations)
- § 14:17 —Common carrier regulation of fixed-satellite  
services—Domsats: tariff structure for transponder  
leasing
- § 14:18 — —Domsat networks
- § 14:19 — —Domsats under *Competitive Carrier*
- § 14:20 — —Transponder resale—Occasional users
- § 14:21 — — —Resellers and superstations
- § 14:22 — —Transponder sharing
- § 14:23 —Nontariff approaches to fixed-satellite services—  
Background
- § 14:24 — —Transponder sales
- § 14:25 — —Legal status of transponder sales participants

## TABLE OF CONTENTS

- § 14:26 —Competitive issues in fixed-satellite service—Price discrimination in transponder sales
- § 14:27 — —Vertical integration of satellite carriers and video networks
- § 14:28 — —Discrimination by satellite carriers in providing programming
- § 14:29 —Low earth orbit satellites

## CHAPTER 15. DIRECT BROADCAST SATELLITES

- § 15:1 Introduction
- § 15:2 Federal regulation of DBS—Spectrum history
- § 15:3 —The 1983 Region II Administrative Radio Conference
- § 15:4 —Interim authorization
- § 15:5 FCC policies and rules for DBS systems—Generally; licensing procedures
- § 15:6 —Program access; public interest duties
- § 15:7 —Uplinks and downlinks
- § 15:8 —Licenses in the 17/24 GHz bands
- § 15:9 —Equal employment rules
- § 15:10 —Technical standards
- § 15:11 —Duty to construct—Due diligence
- § 15:12 —Non-DBS uses of DBS authorizations
- § 15:13 —Noncommercial programming requirements
- § 15:14 Regulatory classifications—Operative principles
- § 15:15 —Customer/programmers: The *NAB* decision
- § 15:16 —Rulings as to processing of applications
- § 15:17 Restrictions on ownership and control
- § 15:18 FCC authority to regulate DBS—Authority over new technologies
- § 15:19 —Authority for nonlocal broadcasting
- § 15:20 Fixed-satellite DBS: Historical development—Mid-power (Ku Band) DBS
- § 15:21 —High-power DBS
- § 15:22 —Low-power (C band) DBS
- § 15:23 — —TVRO: marketing C band direct service
- § 15:24 DBS in operation—Domestic
- § 15:25 —Carriage of broadcast signals
- § 15:26 —International
- § 15:27 —Broadband Internet services
- § 15:28 —Terrestrial uses of satellite spectrum; mobile video
- § 15:29 DBS privacy and copyright
- § 15:30 Signal piracy and encryption
- § 15:31 —Federal protection: section 605 of the Communications Act
- § 15:32 Protection under federal wiretap law

- § 15:33 Signal piracy and encryption—State protection
- § 15:34 DBS and the first amendment
- § 15:35 International regulation of DBS
- § 15:36 Transborder flows—Generally
- § 15:37 —Foreign Agents Registration Act
- § 15:38 —Debate over the free flow of information
- § 15:39 —INTELSAT obligations
- § 15:40 —The Brussels Satellite Convention
- § 15:41 State, municipal, and private regulation of earth stations
- § 15:42 —Zoning considerations
- § 15:43 —Protection of cable franchise revenues
- § 15:44 —Taxing authority on DBS
- § 15:45 —Site-based issues

## CHAPTER 16. WIRELESS VIDEO SERVICES

- § 16:1 Introduction
- § 16:2 Microwave video services—Introduction
- § 16:3 —Regulatory structure
- § 16:4 — —Transition plan
- § 16:5 Broadband Radio Services (BRS)—Definition
- § 16:6 —Video entertainment distribution
- § 16:7 — —Piracy; content issues
- § 16:8 —Election of regulatory status
- § 16:9 —Spectrum allotment
- § 16:10 — —Historical spectrum allotment
- § 16:11 —Channel allocation
- § 16:12 — —Historical processing
- § 16:13 — —Auctions
- § 16:14 —Eligibility and ownership restrictions
- § 16:15 Educational Broadband Service (EBS)—Description of the service—Purpose and permissible uses
- § 16:16 —Spectrum allotments
- § 16:17 — —Historical spectrum allotment
- § 16:18 — —Non-EBS uses and leasing arrangements
- § 16:19 — —Essential-use requirement
- § 16:20 — —Substantial-use requirement
- § 16:21 —Eligibility
- § 16:22 —Channel allocation
- § 16:23 — —Historical ITFS point system
- § 16:24 — —Auctions
- § 16:25 Local multipoint distribution service (LMDS)
- § 16:26 Multichannel Video Distribution and Data Service (MVDDS)

## TABLE OF CONTENTS

- § 16:27 Video over wireless licensed and unlicensed (Wi-Fi) networks—Development
- § 16:28 —Spectrum
- § 16:29 Video over wireless phone networks
- § 16:30 Mobile broadcasting
- § 16:31 —Wireless spectrum
- § 16:32 —Equipment
- § 16:33 Mobile wireless video—Content regulation

## CHAPTER 17. INTERNET-BASED VIDEO, VIDEO-ON-DEMAND, AND DIGITAL VIDEO RECORDERS

- § 17:1 Introduction
- § 17:2 Video-on-Demand: description
- § 17:3 —Operation
- § 17:4 —Suppliers
- § 17:5 Internet-based video: description
- § 17:6 —Regulatory issues
- § 17:7 —Copyright Issues
- § 17:8 Antitrust issues

## CHAPTER 18. INTERNET AND CABLE

- § 18:1 Introduction
- § 18:2 —Development of the Internet
- § 18:3 —Internet technology and architecture
- § 18:4 Peering and interconnection
- § 18:5 Introduction—Services
- § 18:6 —Advanced wireless services; Wi-Fi
- § 18:7 —Cable and Internet
- § 18:8 Cable and broadband; regulatory monitoring; FCC broadband plan
- § 18:9 Introduction—Broadband competitors: Fixed and mobile providers; spectrum issues
- § 18:10 Regulatory classification of cable Internet service—“Information service” classification
- § 18:11 —Regulatory background
- § 18:12 —No authority to franchise
- § 18:13 —Access obligations
- § 18:14 —Universal service contributions and eligibility; E-rate; tax, fee issues
- § 18:15 —Rate regulation, negative options prohibition and basic tier buy-through requirement
- § 18:16 The rise and fall of net neutrality
- § 18:17 —The pre-dawn of net neutrality
- § 18:18 —The short-lived 2015 net neutrality requirements
- § 18:19 —The 2017 Restoring Internet Freedom Order

## CABLE TELEVISION AND OTHER NONBROADCAST VIDEO

- § 18:20 —Reclassifying the Internet
- § 18:21 —Transparency and disclosure
- § 18:22 —The role of the Federal Trade Commission
- § 18:23 —Preemption of state and local regulation
- § 18:24 CALEA for broadband
- § 18:25 Accessibility for physically challenged
- § 18:26 Cable Internet telephony—Technology
- § 18:27 —Regulation
- § 18:28 Regulation of cable-based Web sites—Content-based regulations
- § 18:29 —Copyright issues
- § 18:30 —Defamation and other speech injuries
- § 18:31 —Trademark issues
- § 18:32 Emergency information announcements; video description
- § 18:33 Privacy issues
- § 18:34 Access for unaffiliated Internet service providers—Narrowband ISP service
- § 18:35 —The 1996 Act; section 706
- § 18:36 —Local franchise authority regulation
- § 18:37 Other cable modem service regulation—E-Mail regulation
- § 18:38 Copyright violations by peer-to-peer customers
- § 18:39 Internet service provider obligations
- § 18:40 —Reporting potential child pornography
- § 18:41 —Customer service obligations

## APPENDICES

APPENDIX A. Cable Communications Act

APPENDIX B. Uncodified 1992 Cable Act Provisions

APPENDIX C. 1996 Telecommunications Act

**Table of Laws and Rules**

**Table of Cases**

**Index**