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Recent Legislative Activity

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RECENT LEGISLATIVE ACTIVITY

by Andre Brady

Telecommunications Act of 1996

The President has signed the Telecommunications Act of 1996, S. 652, legislation which is designed "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Among other things, the Act includes telecommunication services provisions governing the development of competitive markets, including removal of barriers to entry, and Bell operating company entry into inter-local access and transport area, "interLATA," services.

Title II deals with broadcast services, with sections governing, *inter alia*, broadcast ownership, term of licenses, broadcast license renewal procedures, direct broadcast satellite service, and restrictions on over-the-air reception devices. Title III deals with cable services, including provisions governing video programming services provided by telephone companies, and regulatory reform provisions, including competition in the provision of telecommunications service.

Title V is entitled "Obscenity and Violence," and includes sections on obscene or harassing use of telecommunications facilities, obscene programming on cable television, scrambling of cable channels for nonsubscribers, cable operator refusal to carry certain programs, and coercion and enticement of minors. Section 551, which deals with parental choice in television programming, establishes a television rating code for sexual, violent, or other indecent material, and requires the manufacture of televisions equipped with a feature designed to enable viewers to block the display of all programs with a common rating (the "V-chip"). **P.L. 104-104. Congressional and Administrative Highlights.**

Television

An interim rule implementing § 641 of the Communications Act, which is primarily targeted at sexually oriented programming, requires that multichannel

video programming distributors fully scramble or fully block sexually explicit adult programming or other "indecent" programming on all channels available through their service. In addition, the Federal Communications Committee ("FCC") has determined that such programming may not be shown during the hours of 6 a.m. to 10 p.m. unless fully scrambled or fully blocked. **61 FR 9648-02 (No. 48).**

Also, a final rule eliminates the FCC's video dial tone, cross-ownership, and authorization rules under § 214 of the Communications Act. The rule eliminates or modifies FCC rules in accordance with the Telecommunications Act of 1996, which provides that: (1) the telephone company cable cross-ownership restriction is repealed; (2) a common carrier shall no longer be required to obtain a certificate under § 214 to establish or operate a system for the delivery of video programming; and (3) the FCC's regulations and policies with respect to video dial tone shall cease to be effective. **61 FR 10475 (No. 51). Congressional and Administrative Highlights.**

Professional football

A bill introduced in the Senate would prohibit the use of federal funds to relocate existing National Football League ("NFL") franchises. The Team Relocation Taxpayer Protection Act of 1996, S. 1529. Under the proposed bill, if any of the requisite elements apply, federal funds, including grants, awards, loans, guarantees, tax credits, exemptions, or tax-exempt financing cannot be used to benefit the franchise seeking to relocate. The proposed bill establishes five criteria which would each cut off the expenditure of federal funds for relocation expenses: (1) the franchise is currently in a public facility; (2) the proposed relocation would be to a new public facility; (3) fan support in the current location was at least 75% of stadium capacity in the preceding season; (4) the current lease with the public entity has not expired; and (5) voters in the present location have approved the use of further tax dollars to improve the current facility or build a new one. The bill is sponsored by Mike DeWine (R-OH) and

John Glenn (D-OH). 1996 WL 30370 (pp. 1-21).
Congressional and Administrative Highlights.

Aircraft maintenance

The Federal Aviation Administration ("FAA") approved a final rule which allows properly trained pilots of aircraft type which are certified for nine or fewer passenger seats and which operate under 14 C.F.R. § 135 to perform certain maintenance tasks on their aircraft. The rule also adds tasks to those items considered to be preventative maintenance. According to the FAA, the changes are necessary because a large number of exemption requests have demonstrated a need for pilots conducting certain types of operations to be able to respond more rapidly to emergency medical missions and to reconfigure cabins to accommodate changing needs to enable varying combinations of passengers and/or cargo to be transported in situations where a certified mechanic is not available. These changes went into effect on May 31, 1996. **61 FR 19498 (No. 85). Congressional and Administrative Highlights.**

Letters of credit

The Illinois Senate recently introduced a bill, S.B. 1312, to amend the Illinois Uniform Commercial Code, S.H.A. 810 ILCS 5/5-101 et seq., which governs letters of credit. The bill would amend S.H.A. 810 ILCS 5/5-114 to provide that the mode of creating or perfecting a security interest in or gaining an assignment of a beneficiary's rights to proceeds of a letter of credit be governed by Article 9 or other law. The bill would also amend S.H.A. 810 ILCS 5/91-1103 to make the rules governing the perfection of security interests in multiple state transactions apply to letter of credit and rights to proceeds of letters of credit. In addition, the bill would amend S.H.A. 810 ILCS 5/9-304 and 5/9-305 to provide that a security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. **Congressional and Administrative Highlights.**

Consumer lease

Two bills, H.B. 3349 and H.B. 3609, introduced in the Illinois House would enact the "Motor Vehicle Consumer Lessee Protection Act" ("the Act") to promote the understanding of vehicle leasing by providing for the disclosure of lease obligations to consumer lessees. Unless displaced by particular provisions of the Act, other state laws, including bankruptcy laws, would supplement the Act's provisions. The prepared bills provide that no consumer lease or other document executed by the lessee in connection therewith can create a security interest in any personal or real property of the lessee to secure the payment of the obligations arising from the consumer lease. However, this prohibition would not apply to the taking of a security deposit, the retention or exercise by a lessor of a right to setoff, or the retention of a security interest in a vehicle or in the proceeds, cancellations, refunds, or other rights of the lessee under the contract issued with respect to the vehicle or lease, including insurance contracts, gap protection contracts, repair contracts, and extended warranty or service contracts. Under the bills, a security interest taken in violation of this provision would be void but would not otherwise affect the validity of a consumer lease. **Congressional and Administrative Highlights.**

Community development programs

The Treasury Department has issued revisions to interim regulations governing the Community Development Financial Institutions Program ("CDFI Program") and the Bank Enterprise Award Program ("BEA Program"), which are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take advantage of the financial services industry. Among other things, the CDFI Program regulations are revised to change the definition of the term "comprehensive business plan" so that the regulations cover a period of not less than the next five years, rather than a period of not less than the next five fiscal years. The CDFI

Program regulations are also revised to clarify that a CDFI certification may be revoked for "good cause." The BEA Program regulations are revised to, *inter alia*, permit an applicant to report investments in specific projects or activities as part of its Eligible Development Activities. **61 FR 67049 1699 (No. 15).**

National Banks. The Office of the Comptroller of the Currency has amended its Community Development Corporation and Project Investments regulation to remove a provision that requires a bank to reinvest profits, dividends, and other distributions from community development investments in activities that promote the public welfare. **60 FR 67049 (No. 249). Congressional and Administrative Highlights.**

Credit unions

An interim final rule from the National Credit Union Administration authorizes unions serving predominantly low-income members to raise secondary capital from foundations and other philanthropic-minded institutional investors. This increased capital will enable the credit unions to make more loans and improve financial services for the limited income groups and the communities they serve. **61 FR 3788 (No. 23). Congressional and Administrative Highlights.**

Sellers of pre-1978 housing must disclose lead paint

The department of Housing and Urban Development ("HUD") and the Environmental Protection Agency ("EPA") have issued regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. The regulations, which implement § 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, direct sellers and lessors of most residential housing built before 1978 to disclose the presence of known lead-based paint and/or lead-based paint hazards and to provide purchasers and

lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards. In addition, sellers and lessors must provide purchasers and lessees with a federally approved lead hazard information pamphlet and a ten-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract.

The regulations, at 40 C.F.R. § 35.86, describe "target housing" as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless a child under six years of age resides or will reside there), or any dwelling without a separate sleeping area. Section 35.82 provides exceptions for the following coverage: (1) sales at foreclosure; (2) leases of housing found lead-based paint free after an inspection; (3) short-term (100 days or under) leases with no renewal; and (4) lease renewals where the lessor has previously made the required disclosures. § 35.96 provides for the imposition of civil monetary penalties for violations, including treble damages for "knowing" violations.

Forms entitled "Sample Disclosure Format for Target Housing Sales," "Sample Disclosure Format for Target Housing Rentals and Leases," and "Sample Contract Contingency Language" are included with the regulations. **61 FR 9064 (No. 45). Congressional and Administrative Highlights.**

Food labeling

The Food and Drug Administration proposes to revise its food labeling regulations by amending the definition of "healthy" to permit certain processed fruits and vegetables and enriched cereal-grain products which conform to a standard of identity to bear that label. The proposal is in response to petitions submitted by the American Frozen Food Institute, the National Food Processors Associations, and the American Bakers Association. **61 FR 5349 (No. 29). Congressional and Administrative Highlights.**