

109TH CONGRESS
1ST SESSION

S. _____

To establish a market driven telecommunications marketplace, to eliminate government managed competition of existing communication service, and to provide parity between functionally equivalent services.

IN THE SENATE OF THE UNITED STATES

Mr. ENSIGN (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish a market driven telecommunications marketplace, to eliminate government managed competition of existing communication service, and to provide parity between functionally equivalent services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Broadband Investment and Consumer Choice Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. General principle.

- Sec. 4. Definitions.
- Sec. 5. Consumer communications service.
- Sec. 6. Federal quality standards.
- Sec. 7. Consumer access to content and applications.
- Sec. 8. Regulatory authority of the commission.
- Sec. 9. Network interconnection and access requirements.
- Sec. 10. Unbundled access to copper loops, physical collocation, and resale.
- Sec. 11. Number portability.
- Sec. 12. Special provisions for 2-percent carriers.
- Sec. 13. Video services.
- Sec. 14. Copyright limitations on exclusive rights video service providers.
- Sec. 15. Municipally owned networks.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Since passage of the Telecommunications
4 Act of 1996, there have been dramatic changes in
5 the industry, technology, and marketplace requiring
6 Congress to revisit the communications policy of the
7 Nation.

8 (2) Inter-modal competition is bringing con-
9 sumers more choice in voice, data, and video service
10 options than ever before.

11 (3) A new policy framework is required to allow
12 functionally equivalent services to compete fairly.

13 (4) Silos of regulation based on historical regu-
14 latory classifications only invite arbitrage and result
15 in government influenced market distortions.

16 (5) Such market distortions coupled with lack
17 of regulatory certainty is chilling investment and
18 stalling deployment of broadband networks.

19 (6) The United States is falling behind the
20 world in broadband penetration and it must encour-

1 age investment to regain a leadership position in the
2 world.

3 (7) Communications networks are global in na-
4 ture and the United States must eliminate barriers
5 for domestic communications providers to compete in
6 the global marketplace.

7 (8) As the United States transitions to a mar-
8 ket driven communications service sector, consumers
9 should be protected with a safety net of access to af-
10 fordable Basic Telephone Service.

11 (9) A new communications framework should
12 foster consumer value and choice by unleashing mar-
13 kets, in lieu of government-managed competition.

14 (10) The 1's and 0's of the digital age are not
15 constrained by State lines or national boundaries,
16 therefore, a patch work quilt of State and local regu-
17 lations will only stifle growth and impose undue
18 costs and burdens on consumers.

19 (11) In the event that market failure leads
20 State or local governments to contemplate construc-
21 tion of their own communications services, the op-
22 tion to enter that market should first be provided to
23 commercial providers under similar terms to ensure
24 that such governments are not competing unneces-
25 sarily with private industry.

1 (12) Robust competition coupled with rapid
2 number portability will empower consumers to
3 choose the best services at the best prices.

4 **SEC. 3. GENERAL PRINCIPLE.**

5 (1) APPLICABILITY OF THE COMMUNICATIONS
6 ACT OF 1934.—Except as provided in this Act, any
7 conduct, activity, service, or service provider shall on
8 or after the date of enactment of this Act, be subject
9 only to the requirements of this Act, if such conduct,
10 activity, service, or service provider was, before the
11 date of enactment of this Act, subject to—

12 (A) titles I, II, and VI or section 332 of
13 the Communications Act of 1934 (47 U.S.C.
14 151 et seq.);

15 (B) any equivalent State common carrier
16 law or regulation with respect to telecommuni-
17 cations, telecommunications services, or infor-
18 mation services; or

19 (C) any State or local law, regulation, or
20 order with respect to cable services or video
21 services.

22 (2) LIMITATION ON GOVERNMENT AUTHOR-
23 ITY.—Notwithstanding any other provision of Fed-
24 eral, State, or local law, and except as provided in

1 this Act, no Federal, State, or local government
2 shall have authority—

3 (A) to regulate the rates, terms, price, or
4 quality of any communications service;

5 (B) to require any facilities-based commu-
6 nications service provider to provide third par-
7 ties with access to its facilities; or

8 (C) to regulate the rates, terms, and condi-
9 tions, if any, on which a facilities-based commu-
10 nications service provider chooses to afford
11 third parties with access to its facilities.

12 (3) NO EFFECT ON TITLES IV, V, VII OF THE
13 COMMUNICATIONS ACT OF 1934.—Nothing in this
14 Act shall be construed to affect title IV, V, or VII
15 of the Communications Act of 1934 (47 U.S.C. 151
16 et seq.) and the provisions of such titles shall be ap-
17 plicable to any conduct, activity, service, or service
18 provider subject to this Act.

19 (4) AFFECT ON CERTAIN PROVISIONS OF TITLE
20 II OF THE COMMUNICATIONS ACT OF 1934.—

21 (A) IN GENERAL.—Nothing in this Act
22 shall be construed to affect the authority of the
23 Commission under sections 206, 207, 208, 209,
24 224, 225, 226, 227, 229, 230, 253, and 255 of
25 the Communications Act of 1934.

1 (B) AUTHORITY STILL VALID.—Except as
2 provided otherwise in this Act, any conduct, ac-
3 tivity, service, or service provider subject to this
4 Act shall be subject to the authority and the re-
5 quirements of the provisions of the Communica-
6 tions Act of 1934 described in subparagraph
7 (A).

8 (5) NO AFFECT ON STATE LAWS OF GENERAL
9 APPLICABILITY.—Nothing in this Act is intended to
10 affect State laws of general applicability to all busi-
11 nesses, except to the extent that such laws are in-
12 consistent with this Act.

13 (6) DIRECT-TO-HOME SATELLITE SERVICES.—
14 No State or local government shall have the author-
15 ity to regulate through franchise agreements or oth-
16 erwise direct-to-home satellite services, including any
17 activity, conduct, or matter concerning—

- 18 (A) rates;
- 19 (B) services;
- 20 (C) billing;
- 21 (D) equipment; and
- 22 (E) sales.

23 (7) REGULATORY TREATMENT OF MOBILE
24 SERVICES.—

1 (A) FORBEARANCE.—The Commission
2 shall forbear from applying any regulation, pro-
3 vision, or requirement imposed by this Act or
4 the Communications Act of 1934 to a mobile
5 service or persons or classes of persons engaged
6 in the provision of such service, to the extent
7 such persons are engaged in the provision of
8 such service, in all of the geographic markets
9 served by such service, unless the Commission
10 determines that enforcement of such regulation
11 or provision is necessary—

12 (i) because of the lack of competition
13 among providers of such service; or

14 (ii) for the protection of public health
15 and safety.

16 (B) PETITION FOR FORBEARANCE.—

17 (i) IN GENERAL.—Any provider or
18 class of providers of a mobile service may
19 submit a petition to the Commission re-
20 questing that the Commission exercise the
21 authority granted under subparagraph (A)
22 with respect to that provider or class of
23 providers.

24 (ii) 1-YEAR REVIEW PERIOD.—Not
25 later than 1 year after the Commission re-

1 ceives a petition submitted under clause
2 (i), such petition shall be deemed granted
3 if the Commission does not deny the peti-
4 tion on either of the grounds described in
5 subparagraph (A), unless such 1-year pe-
6 riod is extended by the Commission.

7 (iii) EXTENSION OF REVIEW PE-
8 RIOD.—The Commission may extend the
9 initial 1-year period under clause (ii) by an
10 additional 90 days if the Commission finds
11 that an extension is necessary to complete
12 the determination required by that clause.

13 (iv) AUTHORITY OF COMMISSION.—
14 The Commission—

15 (I) may grant or deny a petition
16 in whole or in part; and

17 (II) shall explain its decision in
18 writing.

19 (8) REGULATORY TREATMENT OF SEAMLESS
20 MOBILITY.—

21 (A) IN GENERAL.—In implementing the
22 provisions of this Act or any other proceeding,
23 the Commission shall not take any action to im-
24 pede the development of seamless mobility.

1 (B) DEFINITION.—For purposes of this
2 paragraph, the term “seamless mobility” means
3 the ability of a consumer and connecting de-
4 vices of consumer to move easily and smoothly
5 between and among internet protocol enabled
6 technology platforms, facilities, and networks.

7 (9) RULEMAKING.—The Commission shall have
8 authority to establish rules to implement the provi-
9 sions of paragraphs (3) and (4) that are no greater
10 or lesser than the requirements contained in the ti-
11 tles described in paragraph (3) and the sections de-
12 scribed in paragraph (4).

13 **SEC. 4. DEFINITIONS.**

14 (a) IN GENERAL.—For purposes of this Act:

15 (1) BASIC TELEPHONE SERVICE; BTS.—The
16 term “Basic Telephone Service” or “BTS”—

17 (A) means a single-line flat rate voice com-
18 munications service—

19 (i) within a traditional local calling
20 area;

21 (ii) with access to 911;

22 (iii) with touch tone dialing; and

23 (iv) with access to long distance; and

24 (B) does not include any interexchange
25 communications wireline service.

1 (2) BROADBAND COMMUNICATIONS SERVICE.—

2 The term “broadband communications service”
3 means a communications service enabling the trans-
4 mission of communications at a capacity greater
5 than 64 kilobits per second.

6 (3) COMMISSION.—The term “Commission”
7 means the Federal Communications Commission.

8 (4) COMMUNICATIONS SERVICE.—The term
9 “communications service”—

10 (A) means any service enabling an end
11 user to transmit, receive, store, forward, re-
12 trieve, modify, or obtain voice, data, image, or
13 video communications using any technology, in-
14 cluding—

- 15 (i) copper;
- 16 (ii) coaxial cable;
- 17 (iii) optical fiber;
- 18 (iv) terrestrial fixed wireless;
- 19 (v) terrestrial mobile wireless;
- 20 (vi) satellite;
- 21 (vii) power lines; or
- 22 (viii) successor technologies; and

23 (B) does not include—

- 24 (i) television or radio broadcasting;
- 25 and

1 (ii) any service that is not provided to
2 the public or to a substantial portion of the
3 public.

4 (5) CONSUMER.—The term “consumer”—

5 (A) means a consumer of goods or services
6 whether for a fee, in exchange for an explicit
7 benefit, or provided for free; and

8 (B) includes—

9 (i) an end user of communications
10 service;

11 (ii) individuals;

12 (iii) partnerships;

13 (iv) associations;

14 (v) joint-stock companies;

15 (vi) trusts; and

16 (vii) corporations.

17 (6) COPPER LOOPS.—The term “copper loops”
18 means an entirely copper cable transmission facility
19 used to provide circuit switched services, between a
20 distribution frame (or its equivalent) in the central
21 office of an incumbent local exchange carrier and the
22 loop demarcation point at the premise of a con-
23 sumer.

24 (7) ELIGIBLE TELECOMMUNICATIONS CARRIER;
25 ETC.—The term “eligible telecommunications car-

1 rier” or “ETC” means a telecommunications carrier
2 that has been determined, under section 214(e) of
3 the Communications Act of 1934 (47 U.S.C.
4 214(e)), to be eligible for Federal universal service
5 support.

6 (8) FACILITIES -BASED PROVIDER.—The term
7 “facilities-based provider” means a provider of a
8 communications service to the extent that such pro-
9 vider makes available such communications service
10 predominantly by means of its own network.

11 (9) FRANCHISE.—The term “franchise” has the
12 meaning given to such term in section 602(9) of the
13 Communications Act of 1934 (47 U.S.C. 522(9)).

14 (10) INCUMBENT LOCAL EXCHANGE CAR-
15 RIER.—The term “Incumbent Local Exchange Car-
16 rier” has the meaning given to such term in section
17 251(h) of the Communications Act of 1934 (47
18 U.S.C. 251(h)).

19 (11) INTERCONNECTION.—The term “inter-
20 connection” means the physical linking of 2 net-
21 works whether directly or indirectly for the mutual
22 exchange of non video traffic.

23 (12) NARROWBAND COMMUNICATIONS SERV-
24 ICE.—The term “narrowband communications serv-
25 ice” means a communications service enabling the

1 transmission of communications at a capacity of not
2 more than 64 kilobits per second.

3 (13) PUBLIC SWITCHED TELEPHONE NET-
4 WORK.—The term “public switched telephone net-
5 work” means the collection of interconnected circuit
6 switched telecommunications.

7 (14) SATELLITE CARRIER.—The term “satellite
8 carrier” has the meaning given to such term in sec-
9 tion 119(d)(6) of title 17, United States Code.

10 (15) TRANSITING SERVICE.—The term
11 “transiting service” means a service provided by a
12 facilities-based provider which facilitates the indirect
13 interconnection between 2 other facilities-based pro-
14 viders on the circuit switched network.

15 (16) 2-PERCENT CARRIER.—The term “2-per-
16 cent carrier” means an incumbent local exchange
17 provider which serves in aggregate less than 2 per-
18 cent of the access lines of the Nation on the date of
19 enactment this Act.

20 (17) VIDEO SERVICE.—The term “video serv-
21 ice” means—

22 (A) video programming;

23 (B) interactive on demand services; and

24 (C) other programming services.

1 (18) VIDEO SERVICE PROVIDER.—The term
2 “video service provider”—

3 (A) means a provider of video service that
4 utilizes a public right-of-way in the provision of
5 such service; and

6 (B) does not include—

7 (i) a satellite carrier;

8 (ii) any person providing video pro-
9 gramming using radio communication;

10 (iii) any other provider of video serv-
11 ice that does not use a public right-of-way
12 in the provision of its service; or

13 (iv) any person providing video service
14 by means of a commercial mobile service,
15 unless such person has substantially re-
16 placed a video service provider described in
17 subparagraph (A) by occupying a position
18 in the video service market comparable to
19 that occupied by such provider.

20 (b) COMMON TERMINOLOGY.—Except as otherwise
21 provided in subsection (a), terms used in this Act shall
22 have the same meaning given to such terms under sections
23 3, 332(d), and 602 of the Communications Act of 1934
24 (47 U.S.C. 153, 332(d), and 522).

1 **SEC. 5. CONSUMER COMMUNICATIONS SERVICE.**

2 (a) **BASIC TELEPHONE SERVICE SAFETY NET.**—

3 Each telecommunications carrier that is deemed to be an
4 incumbent local exchange carrier on the date of enactment
5 of this Act and any ETC shall offer BTS to business and
6 residential customers throughout the service territory of
7 such incumbent local exchange carrier, as such service ter-
8 ritory was defined on the date of enactment of this Act.

9 (b) **RATE CAP.**—

10 (1) **IN GENERAL.**—Until January 1, 2010, BTS
11 rates charged by an incumbent local exchange car-
12 rier shall be capped at current basic local residential
13 or business rates.

14 (2) **EXCEPTION.**—The cap under paragraph (1)
15 does not include additional fees and charges that
16 may be imposed to cover expenses related to—

17 (A) subscriber line and universal service
18 charges; and

19 (B) other similar taxes and fees.

20 (3) **ANNUAL ADJUSTMENT.**—After January 1,
21 2010, BTS rate caps may be adjusted annually by
22 the incumbent local exchange carrier by an amount
23 not to exceed any adjustment in the Consumer Price
24 Index.

25 (c) **EXPANSION OF BTS.**—An incumbent local ex-
26 change carrier or an ETC may expand or modify the serv-

1 ices it provides in its BTS offering, if such expansion or
2 modification results in a BTS offering that is equal or
3 more favorable to consumers.

4 (d) **BTS TECHNOLOGY.**—

5 (1) **IN GENERAL.**—An incumbent local ex-
6 change carrier or an ETC may determine the tech-
7 nology it uses to meet its BTS obligations under this
8 section, if such technology does not alter the rates,
9 terms, and conditions for a BTS offering required
10 under subsection (b).

11 (2) **EQUAL ACCESS NOT REQUIRED.**—Notwith-
12 standing any other provision of this Act or any other
13 provision of law, a BTS offering may not require
14 equal access to long distance, if the incumbent local
15 exchange carrier or an ETC is offering BTS through
16 a communications technology that does not support
17 equal access as of the date of enactment of this Act.

18 (e) **TERMINATION OF BTS.**—If a consumer purchases
19 any service, capability, or function in addition to a BTS
20 offering, the resulting offering shall not—

21 (1) be deemed to be a BTS offering; and

22 (2) be subject to the requirements of subsection
23 (a).

24 (f) **CARRIER OF LAST RESORT OBLIGATIONS.**—Any
25 carrier of last resort obligation under the Communications

1 Act of 1934 (47 U.S.C. 151 et seq.) or any equivalent
2 State law, regulation, or order shall be satisfied, subject
3 to the exceptions provided in such section, by the ubiq-
4 uitous availability of BTS to all consumers in a service
5 territory.

6 **SEC. 6. FEDERAL QUALITY STANDARDS.**

7 (a) **QUALITY STANDARDS.**—The Commission, taking
8 into consideration that different technologies can poten-
9 tially be used to provide BTS service and that such tech-
10 nologies may have different performance characteristics
11 than a public switched telephone network, shall establish
12 Federal quality standards for BTS service relating to—

- 13 (1) reasonable uptime;
14 (2) installation intervals;
15 (3) repair intervals; and
16 (4) suitable voice quality.

17 (b) **ADDITIONAL STANDARDS.**—The Commission
18 shall establish reasonable maximum intervals for the per-
19 formance of different classes of incumbent local exchange
20 carriers.

21 (c) **ENFORCEMENT.**—

22 (1) **IN GENERAL.**—Notwithstanding any other
23 provision of this Act, a State commission shall have
24 the authority to enforce the Federal quality stand-
25 ards established under subsections (a) and (b).

1 (2) LIMITATION.—

2 (A) IN GENERAL.—The regulatory power
3 granted to a State commission under this sub-
4 section shall apply only to the enforcement of
5 the Federal standards under subsections (a)
6 and (b).

7 (B) PENALTIES.—Any penalties assessed
8 by a State commission for violations of the
9 standards established under subsections (a) and
10 (b) shall be limited to those provided for in
11 paragraph (4).

12 (3) LIMITATION ON CLASS ACTIONS.—No class
13 action alleging a violation of the standards under
14 subsection (a) and (b) shall be maintained under
15 this subsection by an individual or any private party
16 in Federal or State court.

17 (4) PENALTIES.—

18 (A) IN GENERAL.—Notwithstanding any
19 other provision of this Act, any ETC or incum-
20 bent local exchange carrier that violates the
21 standards established under subsections (a) and
22 (b) shall be subject to a civil penalty not to ex-
23 ceed \$50 per household for the first violation.

24 (B) SUBSEQUENT VIOLATIONS.—Subse-
25 quent violations by any ETC or incumbent local

1 exchange carrier of the standards established
2 under subsections (a) and (b) shall increase at
3 intervals of \$50 per violation per household up
4 to a maximum of \$500.

5 (C) ANNUAL ADJUSTMENT.—The amount
6 of penalties provided under this section shall be
7 adjusted annually by an amount equal to any
8 adjustment in the Consumer Price Index.

9 (D) PENALTY TO BE PAID TO CON-
10 SUMERS.—

11 (i) IN GENERAL.—All penalties col-
12 lected under authority of this section shall
13 be paid to consumers that are directly af-
14 fected by the failure to comply with the
15 standards established under subsections
16 (a) and (b).

17 (ii) EXCLUSIVE REMEDY.—The pen-
18 alties established under authority of this
19 section shall be the exclusive remedy for
20 failure to comply with the standards estab-
21 lished under subsections (a) and (b).

22 (d) COMMISSION TO ACT IF STATE COMMISSION
23 WILL NOT ACT.—If a State commission fails to carry out
24 its enforcement responsibilities under subsection (c), the
25 Commission shall—

1 (1) issue an order preempting the jurisdiction
2 of the State commission; and

3 (2) assume exclusive enforcement authority.

4 (e) LIFELINE ASSISTANCE.—Nothing in this section
5 shall affect the collection, distribution, or administration
6 of the Lifeline Assistance Program provided for by the
7 Commission under regulations set forth in section 69.117
8 of title 47, Code of Federal Regulations, and other related
9 sections of such title.

10 **SEC. 7. CONSUMER ACCESS TO CONTENT AND APPLICA-**
11 **TIONS.**

12 (a) ACCESS.—

13 (1) IN GENERAL.—A consumer may not be de-
14 nied access to any content provided over facilities
15 used to provide broadband communications service
16 and a broadband service provider shall not willfully
17 and knowingly block access to such content by a
18 subscriber, unless—

19 (A) such content is determined to be ille-
20 gal;

21 (B) such denial is expressly authorized by
22 Federal or State law; or

23 (C) such access is inconsistent with the
24 terms of the service plan of such consumer in-

1 including applicable bandwidth capacity or quality
2 of service constraints.

3 (2) CUSTOMIZED CONTENT.—A broadband
4 communications service provider may offer to a con-
5 sumer a customized plan developed through such
6 service providers network or commercial arrange-
7 ments with providers of content, applications, and
8 other service components to differentiate—

9 (A) access to content;

10 (B) the availability of applications; and

11 (C) the character of service components
12 available.

13 (3) NON-CUSTOMIZED CONTENT.—Nothing in
14 subsection (a) shall adversely affect the performance
15 of non-customized consumer access to content, serv-
16 ices, and applications offered by the competitors of
17 a broadband service provider.

18 (b) ENFORCEMENT OF ACCESS VIOLATIONS.—

19 (1) IN GENERAL.—The Commission may take
20 such enforcement action as it may prescribe by rule,
21 if the Commission determines that a broadband
22 communications service provider intentionally re-
23 stricted access to any content described in sub-
24 section (a)(1).

1 (2) EXCEPTION.—A broadband communications
2 service provider may not be in violation of subsection
3 (a), if such service provider does not interrupt or
4 block access to any content described in subsection
5 (a)(1) when—

6 (A) performing network—

7 (i) optimization or management;

8 (ii) security; or

9 (iii) prioritization;

10 (B) performing other measures to ensure
11 network security and integrity; or

12 (C) attempting to prevent unlawful con-
13 duct.

14 (c) PARENTAL CONTROLS.—Nothing in this section
15 shall be construed to prohibit—

16 (1) any communications service provider from
17 offering a service that allows a consumer to block
18 display of programs with a common rating; and

19 (2) a provider of mobile services from offering
20 or providing access only to a family friendly service
21 to a subscriber.

22 (d) CONNECTIVITY OF DEVICES.—Except as provided
23 in this section, a broadband service provider shall not pre-
24 vent any person from utilizing equipment and devices in
25 connection with lawful content or applications.

1 (e) ACCESS TO VOIP APPLICATIONS.—Nothing in
2 subsection (a) shall permit a broadband service provider
3 to prevent a customer from using voice over Internet Pro-
4 tocol applications offered by a competitor.

5 **SEC. 8. REGULATORY AUTHORITY OF THE COMMISSION.**

6 (a) FEDERAL POLICY.—The Commission shall, with
7 respect to communication service providers, develop rules
8 and regulations regarding—

9 (1) automatic dialing, telephone solicitation,
10 slamming, cramming, E911, obscene and harassing
11 telephone calls;

12 (2) billing disputes;

13 (3) the use, sale, and distribution of consumer
14 proprietary network information; and

15 (4) access for persons with disabilities, includ-
16 ing—

17 (A) the hearing impaired; and

18 (B) the speech impaired.

19 (b) COMMISSION RULES.—

20 (1) IN GENERAL.—In developing the rules re-
21 quired under subsection (a), the Commission shall
22 take into account the technical limitations of the
23 technology used by communications service pro-
24 viders.

1 (2) TIMING.—Not later than 120 days after the
2 date of enactment of this Act, the Commission shall
3 establish the rules required under subsection (a),
4 and until such rules become effective, the require-
5 ments of Federal law, including all prior Commis-
6 sion rules and orders in effect on the date of enact-
7 ment of this Act relating to the matters described in
8 subsection (a) shall—

9 (A) remain in effect; and

10 (B) be applicable to the matters described
11 in subsection (a).

12 (c) ENFORCEMENT.—

13 (1) STATE COMMISSION AUTHORITY.—Notwith-
14 standing any other provisions of this Act, a State
15 commission shall have authority to enforce the rules
16 established by the Commission pursuant to this sec-
17 tion.

18 (2) LOCAL POINT OF CONTACT.—Each State
19 commission shall designate a local point of contact,
20 which residents of that State may contact to alert
21 the State of any potential violations of the rules and
22 regulations set forth under subsection (a).

23 (3) LIMITATION ON CLASS ACTIONS.—No class
24 action alleging a violation of the rules and regula-
25 tions set forth under subsection (a) shall be main-

1 tained under this subsection by an individual or any
2 private party in Federal or State court.

3 (4) PARENS PATRIAE AUTHORITY.—In any case
4 in which a State commission has reason to believe
5 that an act or practice violates the rules and regula-
6 tions set forth under subsection (a), the State com-
7 mission may bring a civil action on behalf of the
8 residents of that State in a district court of the
9 United States of appropriate jurisdiction, or any
10 other court of competent jurisdiction, to—

11 (A) enjoin the act or practice;

12 (B) obtain—

13 (i) damages in the sum of actual dam-
14 ages, restitution, or other compensation on
15 behalf of affected residents of the State;
16 and

17 (ii) punitive damages, if the violation
18 is willful or intentional; or

19 (C) obtain such other legal and equitable
20 relief as the court may consider to be appro-
21 priate.

22 (5) VENUE; SERVICE OF PROCESS.—

23 (A) VENUE.—Any action brought under
24 this subsection may be brought in the district
25 court of the United States that meets applicable

1 requirements relating to venue under section
2 1931 of title 28, United States Code.

3 (B) SERVICE OR PROCESS.—In an action
4 brought under this subsection, process may be
5 served in any district in which the defendant—

6 (i) is an inhabitant; or

7 (ii) may be found.

8 (d) LIMITATION OF STATE AUTHORITY.—Notwith-
9 standing the provisions of this section, States and State
10 commissions shall have no authority to impose different
11 or additional interconnection or intercarrier compensation
12 requirements on communication service providers.

13 (e) COMMISSION TO ACT IF STATE COMMISSION
14 WILL NOT ACT.—If a State commission fails to carry out
15 its enforcement responsibilities under subsection (c), the
16 Commission shall—

17 (1) issue an order preempting the jurisdiction
18 of the State commission; and

19 (2) assume exclusive enforcement authority.

20 **SEC. 9. NETWORK INTERCONNECTION AND ACCESS RE-**
21 **QUIREMENTS.**

22 (a) INTERCONNECTION ARRANGEMENTS.—

23 (1) IN GENERAL.—Facilities-based providers
24 shall establish commercial arrangements regarding

1 the ability of such facilities-based providers to inter-
2 connect with other facilities-based providers.

3 (2) SCOPE OF ARRANGEMENTS.—The commer-
4 cial arrangements described in paragraph (1) shall
5 establish the rates, terms, and conditions on which
6 facilities-based providers shall interconnect with
7 other facilities-based providers.

8 (3) EXEMPTION FROM REGULATION.—Except
9 as provided in subsections (b) and (c), the commer-
10 cial arrangements described in paragraph (1) may
11 not be subject to regulation by the Commission or
12 by the States or State commissions.

13 (b) COMMISSION INTERVENTION WITH
14 NARROWBAND COMMUNICATION SERVICE PROVIDERS.—

15 (1) IN GENERAL.—Not later than 6 months
16 after the date of enactment of this Act, the Commis-
17 sion shall develop a regulatory framework governing
18 interconnection between facilities-based providers
19 and narrowband communication service providers.

20 (2) SCOPE OF REGULATORY FRAMEWORK.—The
21 regulatory framework described in paragraph (1)
22 shall apply only in connection with the termination
23 or origination of traffic on narrowband communica-
24 tion service providers facilities.

1 (3) UNIFORM RATE STRUCTURE.—The regu-
2 latory framework described in paragraph (1)—

3 (A) shall establish a uniform rate structure
4 governing interconnection between facilities-
5 based providers and narrowband communication
6 service providers;

7 (B) shall apply only in the event
8 narrowband communication service providers
9 cannot agree on the rates, terms, and condi-
10 tions of interconnection between facilities-based
11 providers and such narrowband communication
12 service providers; and

13 (C) may not require the Commission to use
14 any particular rate-making methodology in es-
15 tablishing the uniform rate structure required
16 by this paragraph.

17 (4) NO STATE AUTHORITY.—No State or State
18 commission may establish rates, terms, or conditions
19 governing interconnection between facilities-based
20 providers and narrowband communication service
21 providers regardless of the jurisdictional nature of
22 the underlying traffic involved.

23 (5) CONTENTS OF FRAMEWORK.—The regu-
24 latory framework described in paragraph (1)—

1 (A) shall establish reasonable and equitable
2 points of interconnection;

3 (B) shall facilitate narrowband commu-
4 nication service providers efforts to innovate
5 and introduce new services and packages of
6 services to consumers;

7 (C) shall eliminate arbitrage opportunities;

8 (D) shall eliminate intercarrier disputes
9 over the rates, terms, and conditions of direct
10 interconnection; and

11 (E) may not unduly burden electronic com-
12 merce.

13 (c) TRANSITING SERVICE.—

14 (1) IN GENERAL.—Transiting service providers
15 shall establish commercial arrangements with re-
16 spect to transiting services.

17 (2) SCOPE OF ARRANGEMENTS.—The commer-
18 cial arrangements described in paragraph (1) shall
19 establish the rates, terms, and conditions for
20 transiting service.

21 (3) EXEMPTION FROM REGULATION.—Except
22 as provided in paragraphs (4) and (5), the commer-
23 cial arrangements described in paragraphs (1) and
24 (2) may not be subject to regulation by the Commis-
25 sion or by the States or State commissions.

1 (4) COMMISSION INTERVENTION FOR
2 TRANSITING SERVICE.—

3 (A) ESTABLISHMENT OF REGULATORY
4 FRAMEWORK.—Not later than 6 months after
5 the date of enactment of this Act, the Commis-
6 sion shall develop a regulatory framework gov-
7 erning transiting service.

8 (B) APPLICABILITY OF REGULATORY
9 FRAMEWORK.—The regulatory framework de-
10 veloped under subparagraph (A) shall apply
11 only in the event agreement cannot be reached
12 on the rates, terms, and conditions for
13 transiting service pursuant to paragraphs (1)
14 and (2).

15 (5) SCOPE OF REGULATORY FRAMEWORK.—The
16 regulatory framework described in paragraph (4)
17 shall establish the rates, terms, and conditions on
18 which facilities-based providers shall provide
19 transiting service.

20 (6) NO COMPENSATION OBLIGATION.—
21 Transiting service providers shall have no obligation
22 to compensate any party to an indirect interconnec-
23 tion of narrowband communications service providers
24 for the delivery of any transited traffic.

1 (d) SUNSET OF REGULATORY FRAMEWORK.—The
2 regulatory frameworks established under subsections (b)
3 and (c) shall terminate on the day occurring 5 years after
4 the date of enactment of this Act.

5 (e) NOTICE OF CHANGES.—A facilities-based pro-
6 vider of communications service shall provide reasonable
7 public notice of—

8 (1) changes in the information necessary for the
9 transmission and routing of communications service
10 using such facilities-based provider of communica-
11 tions service facilities or networks; and

12 (2) any other changes that would affect the
13 interoperability of such facilities and networks.

14 (f) IDENTIFICATION OF TRAFFIC.—Any party seek-
15 ing to use a facilities-based provider of communications
16 service network to route their traffic through another fa-
17 cilities-based provider of communications service shall, to
18 the extent technically feasible and in a manner consistent
19 with applicable industry standards, identify—

20 (1) such traffic; and

21 (2) the origin of such traffic.

22 (g) EQUAL ACCESS.—Nothing in this Act shall re-
23 quire any communications service provider, or any other
24 person, that was not required on the date of enactment
25 of this Act to provide equal access to common carriers for

1 the provision of telephone toll services to provide such
2 equal access.

3 **SEC. 10. UNBUNDLED ACCESS TO COPPER LOOPS, PHYS-**
4 **ICAL COLLOCATION, AND RESALE.**

5 (a) INCUMBENT LOCAL EXCHANGE CARRIER OBLI-
6 GATIONS.—

7 (1) UNBUNDLED ACCESS.—

8 (A) IN GENERAL.—An incumbent local ex-
9 change carrier shall provide unbundled access
10 to copper local loops on commercially reason-
11 able rates, terms, and conditions.

12 (B) COMMISSION TO RESOLVE DIS-
13 PUTES.—The Commission shall resolve any dis-
14 putes regarding unbundled access to copper
15 loops as described in subparagraph (A).

16 (C) EXEMPTION.—Except as provided in
17 subparagraph (A), no facilities-based provider
18 of communications service shall have any obli-
19 gation to provide unbundled access to any of its
20 facilities, equipment, or support systems, either
21 individually or in combination.

22 (2) COLLOCATION.—

23 (A) IN GENERAL.—An incumbent local ex-
24 change carrier shall provide physical collocation

1 at the central office of such carrier for access
2 to unbundled copper loops.

3 (B) VIRTUAL COLLOCATION.—If the phys-
4 ical collocation described in subparagraph (A) is
5 not practical for technical reasons or due to
6 space limitations, virtual collocation for access
7 to unbundled copper loops shall be required.

8 (3) RESALE.—

9 (A) IN GENERAL.—An incumbent local ex-
10 change carrier shall provide resale of any local
11 narrowband communications service that is sub-
12 ject to regulation under this Act.

13 (B) RESALE RATE.—The resale rate appli-
14 cable to subparagraph (A) shall—

15 (i) be established by the Commission;

16 and

17 (ii) equal the retail rate for such serv-
18 ices less the costs actually avoided.

19 (b) SUNSET.—The obligations established under sub-
20 section (a) shall terminate on January 1, 2011.

21 (c) REPORT.—Not later than January 1, 2009, the
22 Commission shall submit to Congress a detailed report,
23 with recommendations, on whether the obligations estab-
24 lished under subsection (a) are in the public interest.

1 **SEC. 11. NUMBER PORTABILITY.**

2 (a) IN GENERAL.—All communications service pro-
3 viders that use numbers or the successor system assigned
4 by the North American Numbering Plan, or any such suc-
5 cessor entity, shall provide number portability to con-
6 sumers.

7 (b) 5-DAY RULE.—The Commission shall develop
8 rules and regulations requiring that numbers be ported in
9 no more than 5 business days.

10 (c) RULEMAKING PROCEEDING.—The Commission
11 may commence a rulemaking proceeding if the Commis-
12 sion finds that excessive early cancellation fees charged
13 by communications service providers are hindering the
14 ability of consumers to change providers.

15 **SEC. 12. SPECIAL PROVISIONS FOR 2-PERCENT CARRIERS.**

16 (a) OPT IN/OPT OUT.—

17 (1) IN GENERAL.—Any 2-percent carrier may
18 elect to continue to be subject to Federal and State
19 statutory and regulatory requirements as such re-
20 quirements existed on the date of enactment of this
21 Act.

22 (2) STUDY AREA BASIS.—The election under
23 paragraph (1) may be made only on a study area
24 basis.

25 (b) RURAL EXEMPTION.—If a communications serv-
26 ice provider that is also a rural telephone company, as that

1 term is defined in section 3 of the Communications Act
2 of 1934 (47 U.S.C. 153), elects under subsection (a) to
3 continue to be subject to the regulatory requirements in
4 existence on the date of enactment of this Act, such com-
5 munications service provider shall retain its rural exemp-
6 tion pursuant to section 251(f) of the Communications Act
7 of 1934 (47 U.S.C. 251(f)).

8 (c) NECA TARIFFS UNAFFECTED.—Nothing in this
9 section precludes or affects any tariff filed by the National
10 Exchange Carrier Association, and any such tariff may
11 continue to include—

12 (1) all tariffed services in effect on the date of
13 enactment of this Act; and

14 (2) any new service or modifications to existing
15 service typically covered by such tariffs.

16 (d) NEGOTIATION AUTHORITY OF NECA.—For the
17 purpose of conducting and concluding commercial negotia-
18 tions regarding interconnection arrangements, the Na-
19 tional Exchange Carrier Association is authorized to be
20 the negotiating agent for any 2-percent carrier wishing to
21 use the National Exchange Carrier Association for such
22 purpose.

23 **SEC. 13. VIDEO SERVICES.**

24 (a) VIDEO SERVICE PROVIDERS.—A video service
25 provider may not be required—

- 1 (1) to obtain a State or local video franchise;
2 (2) to build out its video distribution system in
3 any particular manner; or
4 (3) to provide leased or common carrier access
5 to its video distribution facilities and equipment to
6 any other video service provider.

7 (b) STATE AND LOCAL GOVERNMENT AUTHORITY TO
8 REGULATE.—

9 (1) REASONABLE FEE.—

10 (A) COMPENSATING LOCAL GOVERN-
11 MENTS.—

12 (i) IN GENERAL.—A State or local
13 government may require a video service
14 provider to pay a reasonable video service
15 fee on an annual basis to the units of local
16 government in which the video service pro-
17 vider provides video service for the purpose
18 of compensating such local government for
19 the costs that it incurs in managing the
20 public rights-of-way used by such provider.

21 (ii) AMOUNT OF FEE.—The video
22 service fee imposed under clause (i) shall
23 not exceed 5 percent of gross revenues.

24 (B) DEFINITION.—For purposes of this
25 paragraph, the term “gross revenues”—

1 (i) means all consideration of any
2 kind or nature received by a video service
3 provider from its subscribers for the provi-
4 sion of video service within a municipality,
5 including—

6 (I) cash;
7 (II) credits;
8 (III) property; and
9 (IV) in-kind contributions (serv-
10 ices or goods); and

11 (ii) does not include—

12 (I) revenue not actually received,
13 even if billed, including bad debt;

14 (II) revenue received by any affil-
15 iate or any other person in exchange
16 for supplying goods or services used
17 by a video service provider to provide
18 video service;

19 (III) refunds, rebates, or dis-
20 counts provided to—

21 (aa) subscribers;
22 (bb) leased access providers;
23 (cc) advertisers; or
24 (dd) the municipality;

- 1 (IV) revenue from services not
2 classified as video service, including—
3 (aa) revenue received from
4 telecommunications services;
5 (bb) revenue received from
6 information services;
7 (cc) revenue received in con-
8 nection with advertising;
9 (dd) revenue received in con-
10 nection with home shopping serv-
11 ices; or
12 (ee) any other revenue at-
13 tributed by a video service pro-
14 vider to non-video service in ac-
15 cordance with any applicable
16 rules, regulations, standards, or
17 orders;
- 18 (V) revenue paid by subscribers
19 to home shopping programmers di-
20 rectly from the sale of merchandise
21 through any home shopping channel
22 offered as part of the video service;
- 23 (VI) the sale of video service for
24 resale in which the purchaser of such
25 service is required to collect a 5 per-

1 cent fee from the customer of such
2 purchaser;

3 (VII) any tax of general applica-
4 bility—

5 (aa) imposed upon a video
6 service provider or upon sub-
7 scribers by a Federal, State, city,
8 or any other governmental entity;
9 and

10 (bb) required to be collected
11 by a video service provider and
12 remitted to the taxing entity, in-
13 cluding—

14 (AA) sales or use taxes;

15 (BB) gross receipts
16 taxes;

17 (CC) excise taxes;

18 (DD) utility users
19 taxes;

20 (EE) public service
21 taxes;

22 (FF) communication
23 taxes; and

24 (GG) the 5 percent fee
25 described in subclause (VI);

1 (VIII) the provision of video serv-
2 ice to public institutions, public
3 schools, or governmental entities at no
4 charge;

5 (IX) any foregone revenue from
6 the provision of free or reduced-cost
7 video service by a video service pro-
8 vider to any person, including—

9 (aa) the municipality;

10 (bb) other public institu-
11 tions; and

12 (cc) other institutions;

13 (X) sales of capital assets or
14 sales of surplus equipment;

15 (XI) reimbursement by program-
16 mers of marketing costs incurred by a
17 video service provider for the intro-
18 duction or promotion of programming;

19 (XII) directory or Internet adver-
20 tising revenue, including revenue
21 from—

22 (aa) yellow page sales;

23 (bb) white page sales;

24 (cc) banner advertisement;

25 and

1 (dd) electronic publishing;

2 and

3 (XIII) copyright fees paid to the

4 United States Copyright Office.

5 (2) RIGHTS-OF-WAY DISPUTES TO BE RE-
6 SOLVED BY THE COMMISSION OR FEDERAL
7 COURTS.—Any dispute regarding the application or
8 amount of fees charged under paragraph (1) shall,
9 upon request of a local unit of government or af-
10 fected video service provider, be resolved—

11 (A) by the Commission; or

12 (B) by filing a claim in the district court
13 of the United States that meets applicable re-
14 quirements relating to venue under section
15 1931 of title 28, United States Code.

16 (3) STATE ADJUSTMENT OF FEES AND
17 TAXES.—

18 (A) IN GENERAL.—A video service provider
19 may petition the Commission for a reduction of
20 the fee paid by such provider under this sub-
21 section, if a State adjusts the fees and taxes
22 paid by communications service providers or
23 their customers for the purpose of—

24 (i) providing fairness;

25 (ii) equality of treatment; or

1 (iii) simplification of the fees and
2 taxes of such providers relative to each
3 other or to other commercial and industrial
4 tax payers in general within such State.

5 (B) COMMISSION ACTION ON PETITION.—

6 The Commission shall act on any petition de-
7 scribed in subparagraph (A) not later than 60
8 days after its receipt.

9 (C) GRANT OF PETITION.—The Commis-
10 sion shall grant a petition described in subpara-
11 graph (A) if and to the extent it determines
12 that the fees paid by a video service provider
13 should be reduced in order to achieve the pur-
14 poses of fairness, equality of treatment, or sim-
15 plification described in subparagraph (A).

16 (4) FEE APPEARANCE ON SUBSCRIBER'S
17 BILL.—A video service provider may designate that
18 portion of a subscriber's bill attributable to a video
19 service fee as a separate item on the subscriber's
20 bill.

21 (c) APPLICABILITY OF TITLE VI OF THE COMMU-
22 NICATIONS ACT; CABLE ACT PROVISIONS.—

23 (1) OBLIGATIONS AND DUTIES.—Any video
24 service provider shall—

1 (A) not be subject to any provision of title
2 VI of the Communications Act of 1934 (47
3 U.S.C. 521 et seq.), except as otherwise pro-
4 vided in this paragraph;

5 (B) be subject to the retransmission con-
6 sent obligations of section 325(b) of the Com-
7 munications Act of 1934 (47 U.S.C. 325(b));

8 (C) carry and determine the appropriate
9 channel positioning and grouping of, within
10 each local franchise area, not more than 4 pub-
11 lic, educational, or governmental use channels
12 as required under section 611 of such Act (47
13 U.S.C. 531);

14 (D) carry the signals of local commercial
15 television stations as required under section 614
16 of such Act (47 U.S.C. 534);

17 (E) carry the signals of local noncommer-
18 cial educational television stations as required
19 under section 615 of such Act (47 U.S.C. 535);

20 (F) be subject to the regulation of carriage
21 agreements under section 616 of such Act (47
22 U.S.C. 536);

23 (G) be subject to the requirements regard-
24 ing obscene or indecent programming under

1 section 624(d)(2) of such Act (47 U.S.C.
2 544(d)(2));

3 (H) be entitled to the benefits and protec-
4 tions under section 624(f)(1) of such Act (47
5 U.S.C. 544(f)(1)) regarding the content of
6 video service;

7 (I) be subject to the emergency informa-
8 tion requirements under section 624(g) of such
9 Act (47 U.S.C. 544(g));

10 (J) be subject to the consumer electronics
11 equipment capability requirements under sec-
12 tion 624A of such Act (47 U.S.C. 545);

13 (K) be entitled to the benefits and protec-
14 tions under section 628 of such Act (47 U.S.C.
15 548);

16 (L) be subject to the requirements under
17 section 629 of such Act (47 U.S.C. 549);

18 (M) protect the personally identifiable in-
19 formation of its subscribers in the same manner
20 as is required of cable operators with respect to
21 subscribers to cable services under section 631
22 of such Act (47 U.S.C. 551);

23 (N) be entitled to the benefits and protec-
24 tions under section 633 of such Act (47 U.S.C.
25 553);

1 (O) be subject to the equal employment
2 provisions as required under subsections (a)
3 through (h) of section 634 of such Act (47
4 U.S.C. 554);

5 (P) be subject to criminal or civil liability
6 under section 638 of such Act (47 U.S.C. 558);

7 (Q) be subject to the penalties prescribed
8 for the transmission of obscene programming
9 under section 639 of such Act (47 U.S.C. 559);
10 and

11 (R) be required to comply with the scram-
12 bling requirements under section 640 of such
13 Act (47 U.S.C. 560).

14 (2) DETERMINATIONS OF LOCAL SIGNALS.—

15 For purposes of complying with subparagraphs (C)
16 and (D) of paragraph (1), a video service provider
17 shall treat as local stations with respect to a cus-
18 tomer located within the jurisdiction of any fran-
19 chising authority the same stations that are treated
20 as local television stations for a cable system located
21 within such jurisdiction.

22 (3) IMPLEMENTATION.—

23 (A) REGULATIONS REQUIRED.—Not later
24 than 120 days after the date of enactment of
25 this Act, the Commission shall prescribe regula-

1 tions to implement the requirements of para-
2 graph (1) that are no greater or lesser than the
3 obligations required by the specifically ref-
4 erenced provisions of the Communications Act
5 of 1934 (47 U.S.C. 151 et seq.).

6 (B) EFFECTIVE DATE OF REGULATIONS.—
7 The regulations required under subparagraph
8 (A) shall take effect 6 months after the date of
9 enactment of this Act.

10 (4) EXISTING FRANCHISES.—

11 (A) IN GENERAL.—Any provision in any
12 franchise granted by a franchising authority
13 that is inconsistent with the provisions of this
14 Act shall be deemed to be preempted and super-
15 seded.

16 (B) TREATMENT AS A VIDEO SERVICE
17 PROVIDER.—A cable operator operating under
18 the authority of any franchise described in sub-
19 paragraph (A) prior to the date of enactment of
20 this Act shall be treated as a video service pro-
21 vider under this Act.

22 (5) CABLE CHANNELS FOR PUBLIC, EDU-
23 CATIONAL, AND GOVERNMENTAL USE.—The govern-
24 mental entity that was the franchising authority for
25 a State or a political subdivision of a State on the

1 date of enactment of this Act, shall for that State
2 or political subdivision determine which public, edu-
3 cational, or governmental entities shall be authorized
4 to designate the channels required under paragraph
5 (1)(C).

6 (6) CONSUMER PROTECTION AND CUSTOMER
7 SERVICE.—

8 (A) REGULATIONS REQUIRED.—Not later
9 than 120 days after the date of enactment of
10 this Act, the Commission shall establish regula-
11 tions with respect to customer service and con-
12 sumer protection requirements of the video
13 service provider.

14 (B) EFFECTIVE DATE OF REGULATIONS.—
15 The regulations required under subparagraph
16 (A) shall take effect 6 months after the date of
17 enactment of this Act.

18 (7) STATE COMMISSION AUTHORITY.—

19 (A) IN GENERAL.—Notwithstanding any
20 other provision of this Act, a State commission
21 shall have the authority to enforce the require-
22 ments of paragraph (6)(A).

23 (B) LOCAL POINT OF CONTACT.—Each
24 State commission shall designate a local point
25 of contact, which residents of such geographic

1 area may contact to alert such State commis-
2 sion of any potential violations of the require-
3 ments and obligations established under para-
4 graph (6)(A).

5 (C) LIMITATION ON CLASS ACTIONS.—No
6 class action alleging a violation of the obliga-
7 tions set forth in the regulations established by
8 the Commission under paragraph (6)(A) shall
9 be maintained under this subsection by an indi-
10 vidual or any private party in Federal or State
11 court.

12 (D) PARENS PATRIAE AUTHORITY.—In
13 any case in which a State commission has rea-
14 son to believe that an act or practice violates
15 the obligations set forth in the regulations es-
16 tablished by the Commission under paragraph
17 (6)(A), the State commission may bring a civil
18 action on behalf of the residents within its ju-
19 risdiction in a district court of the United
20 States of appropriate jurisdiction, or any other
21 court of competent jurisdiction, to—

22 (i) enjoin the act or practice;

23 (ii) obtain—

24 (I) damages in the sum of actual
25 damages, restitution, or other com-

1 pensation on behalf of affected resi-
2 dents of the State; and

3 (II) punitive damages, if the vio-
4 lation is willful or intentional; or

5 (iii) obtain such other legal and equi-
6 table relief as the court may consider to be
7 appropriate.

8 (E) VENUE; SERVICE OF PROCESS.—

9 (i) VENUE.—Any action brought
10 under this paragraph may be brought in
11 the district court of the United States that
12 meets applicable requirements relating to
13 venue under section 1931 of title 28,
14 United States Code.

15 (ii) SERVICE OR PROCESS.—In an ac-
16 tion brought under this paragraph, process
17 may be served in any district in which the
18 defendant—

19 (I) is an inhabitant; or

20 (II) may be found.

21 (F) LIMITATION.—A State commission
22 that is authorized to enforce the requirements
23 of paragraph (6) may not be authorized to im-
24 pose additional obligations beyond those estab-
25 lished by the Commission in paragraph (6)(A).

1 (d) COMMISSION TO ACT IF STATE COMMISSION
2 WILL NOT ACT.—If a State commission fails to carry out
3 its enforcement responsibilities under subsection (c)(7),
4 the Commission shall—

5 (1) issue an order preempting the jurisdiction
6 of the State commission; and

7 (2) assume exclusive enforcement authority.

8 (e) ABILITY TO MANAGE PUBLIC RIGHTS-OF-WAY.—

9 (1) IN GENERAL.—Except as provided in this
10 section, nothing in this Act shall affect the authority
11 of a State or local government to manage the public
12 right-of-way in a manner that is—

13 (A) non-discriminatory;

14 (B) competitively neutral; and

15 (C) consistent with applicable State law.

16 (2) CONSTRUCTION PERMITS.—

17 (A) IN GENERAL.—In managing the public
18 rights-of-way a State or local government may
19 require the issuance of a construction permit,
20 without cost, to a video service provider that is
21 locating facilities in such public right-of-way.

22 (B) RESPONSE WORK OR REPAIR.—If
23 there is an emergency necessitating response
24 work or repair in the public right-of-way, a
25 video service provider may begin such work or

1 repair without prior approval from a State or
2 local government, if such provider notifies the
3 State or local government as promptly as possible
4 after beginning such work or repair.

5 (3) **TIMELY ACTION REQUIRED.**—In managing
6 the public rights-of-way a State or local government
7 that is required to issue permits or licenses for such
8 use shall be required to act upon any such request
9 for use in a timely manner.

10 (4) **NEW ROADS.**—Nothing in this section shall
11 effect the ability of a State or local government to
12 impose reasonable limits on access to public rights-
13 of-way associated with newly constructed roads.

14 (f) **CONFORMING AMENDMENTS TO THE COMMU-
15 NICATIONS ACT OF 1934.**—

16 (1) **POLE ATTACHMENTS.**—Section 224 of the
17 Communications Act of 1934 (47 U.S.C. 224) is
18 amended—

19 (A) in subsection (a)(1), by striking “local
20 exchange carrier” and inserting “telecommuni-
21 cations carrier”;

22 (B) by striking subsections (a)(5) and
23 (d)(3);

24 (C) in subsection (d)(3), in the first sen-
25 tence by striking all after “cable television sys-

1 tem” through the period at the end and insert-
2 ing “and facilities of other video service pro-
3 viders, regardless of the nature of the services
4 provided.”;

5 (D) by adding at the end the following:

6 “(j) WIRELESS SERVICE FACILITY EXEMPTION.—
7 Nothing in this section applies to a wireless service facil-
8 ity, including to towers of a provider of mobile services.”.

9 (2) CARRIAGE OF LOCAL COMMERCIAL TELE-
10 VISION SIGNALS.—Section 614(b)(4) of the Commu-
11 nications Act of 1934 (47 U.S.C. 534(b)(4)) is
12 amended to read as follows:

13 “(4) SIGNAL QUALITY.—

14 “(A) NON-DEGRADATION.—The signals of
15 local commercial television stations that a cable
16 operator carries shall be carried without mate-
17 rial degradation.

18 “(B) CARRIAGE STANDARDS.—The Com-
19 mission shall adopt carriage standards to en-
20 sure that, to the extent technically feasible, the
21 quality of signal processing and carriage pro-
22 vided by a cable system for the carriage of local
23 commercial television stations will be no less
24 than that provided by the system for carriage of
25 any other type of broadcast local commercial

1 television signal when using the same trans-
2 mission technology.”.

3 (3) CARRIAGE OF NONCOMMERCIAL EDU-
4 CATIONAL TELEVISION.—Section 615(g)(2) of the
5 Communications Act of 1934 (47 U.S.C. 535(g)(2))
6 is amended to read as follows—

7 “(2) BANDWIDTH AND TECHNICAL QUALITY.—A
8 cable operator shall—

9 “(A) provide each qualified local non-com-
10 mercial television station whose signal is carried
11 in accordance with this section with bandwidth
12 and technical capacity equivalent to that pro-
13 vided to commercial television stations carried
14 on the cable system when using the same trans-
15 mission technology; and

16 “(B) carry the signal of each qualified
17 local non-commercial educational television station
18 without material degradation.”.

19 (4) DEVELOPMENT OF COMPETITION AND DI-
20 VERSITY IN VIDEO PROGRAMMING DISTRIBUTION.—
21 Section 628 of the Communications Act of 1934 (47
22 U.S.C. 548) is amended to read as follows:

1 **“SEC. 628. DEVELOPMENT OF COMPETITION AND DIVER-**
2 **SITY IN VIDEO PROGRAMMING DISTRIBUTION.**
3 **TION.**

4 “(a) PURPOSE.—The purpose of this section is—

5 “(1) to promote the public interest, conven-
6 ience, and necessity by increasing competition and
7 diversity in the multichannel video programming
8 market;

9 “(2) to increase the availability of MVPD pro-
10 gramming and satellite broadcast programming to
11 persons in rural and other areas not currently able
12 to receive such programming; and

13 “(3) to spur the development of communica-
14 tions technologies.

15 “(b) PROHIBITION.—It shall be unlawful for an
16 MVPD, an MVPD programming vendor in which an
17 MVPD has an attributable interest, or a satellite broad-
18 cast programming vendor to engage in unfair methods of
19 competition or unfair or deceptive acts or practices, the
20 purpose or effect of which is to hinder significantly or to
21 prevent any MVPD from providing MVPD programming
22 or satellite broadcast programming to subscribers or con-
23 sumers.

24 “(c) REGULATIONS REQUIRED.—

25 “(1) PROCEEDING REQUIRED.—Not later than
26 180 days after the date of enactment of the

1 Broadband Investment and Consumer Choice Act,
2 the Commission shall prescribe regulations to specify
3 particular conduct that is prohibited by subsection
4 (b), in order to promote—

5 “(A) the public interest, convenience, and
6 necessity by increasing competition and diver-
7 sity in the multichannel video programming
8 market; and

9 “(B) the continuing development of com-
10 munications technologies.

11 “(2) MINIMUM CONTENTS OF REGULATION.—

12 The regulations required under paragraph (1)
13 shall—

14 “(A) establish effective safeguards to pre-
15 vent an MVPD which has an attributable inter-
16 est in an MVPD programming vendor or a sat-
17 ellite broadcast programming vendor from un-
18 duly or improperly influencing the decision of
19 such vendor to sell, or the prices, terms, and
20 conditions of sale of, MVPD programming or
21 satellite broadcast programming to any unaffili-
22 ated MVPD;

23 “(B) prohibit discrimination by an MVPD
24 programming vendor in which an MVPD has an
25 attributable interest or by a satellite broadcast

1 programming vendor in the prices, terms, and
2 conditions of sale or delivery of MVPD pro-
3 gramming or satellite broadcast programming
4 among or between cable systems, cable opera-
5 tors, or other MVPDs, or their agents or buy-
6 ing groups, except that an MVPD programming
7 vendor in which an MVPD has an attributable
8 interest or such a satellite broadcast program-
9 ming vendor shall not be prohibited from—

10 “(i) imposing reasonable requirements
11 for—

12 “(I) creditworthiness;

13 “(II) offering of service; and

14 “(III) financial stability and
15 standards regarding character and
16 technical quality;

17 “(ii) establishing different prices,
18 terms, and conditions to take into account
19 actual and reasonable differences in the
20 cost of creation, sale, delivery, or trans-
21 mission of MVPD programming or satellite
22 broadcast programming;

23 “(iii) establishing different prices,
24 terms, and conditions which take into ac-
25 count economies of scale, cost savings, or

1 other direct and legitimate economic bene-
2 fits reasonably attributable to the number
3 of subscribers served by the distributor; or

4 “(iv) entering into an exclusive con-
5 tract that is permitted under subparagraph
6 (D);

7 “(C) prohibit practices, understandings,
8 arrangements, and activities, including exclusive
9 contracts for MVPD programming or satellite
10 broadcast programming between an MVPD and
11 an MVPD programming vendor or satellite
12 broadcast programming vendor, that prevent an
13 MVPD from obtaining such programming from
14 any MVPD programming vendor in which an
15 MVPD has an attributable interest or any sat-
16 ellite broadcast programming vendor in which
17 an MVPD has an attributable interest for dis-
18 tribution to persons in areas not served by an
19 MVPD as of the date of enactment of the
20 Broadband Investment and Consumer Choice
21 Act; and

22 “(D) with respect to distribution to per-
23 sons in areas served by an MVPD, prohibit ex-
24 clusive contracts for MVPD programming or
25 satellite broadcast programming between an

1 MVPD and an MVPD programming vendor in
2 which an MVPD has an attributable interest or
3 a satellite broadcast programming vendor in
4 which an MVPD has an attributable interest,
5 unless the Commission determines (in accord-
6 ance with paragraph (4)) that such contract is
7 in the public interest.

8 “(3) LIMITATIONS.—

9 “(A) GEOGRAPHIC LIMITATIONS.—Nothing
10 in this section shall require any person who is
11 engaged in the national or regional distribution
12 of video programming to make such program-
13 ming available in any geographic area beyond
14 which such programming has been authorized
15 or licensed for distribution.

16 “(B) APPLICABILITY TO SATELLITE RE-
17 TRANSMISSIONS.—Nothing in this section shall
18 apply—

19 “(i) to the signal of any broadcast af-
20 filiate of a national television network or
21 other television signal that is retransmitted
22 by satellite but that is not satellite broad-
23 cast programming; or

24 “(ii) to any internal satellite commu-
25 nication of any broadcast network or cable

1 network that is not satellite broadcast pro-
2 gramming.

3 “(C) EXCLUSION OF INDIVIDUAL VIDEO
4 PROGRAMS.—Nothing in this section shall apply
5 to a specific individual video program produced
6 by an MVPD for local distribution by that
7 MVPD and not made available directly or indi-
8 rectly to unaffiliated MVPDs, if—

9 “(i) all other video programming car-
10 ried on a programming channel or network
11 on which the individual video program is
12 carried, is made available to unaffiliated
13 MVPDs pursuant to paragraph (2)(D);
14 and

15 “(ii) such specific individual video
16 program is not the transmission of a sport-
17 ing event.

18 “(D) MVPD SPORTS PROGRAMMING.—The
19 prohibition set forth in paragraph (2)(D), and
20 the rules adopted by the Commission pursuant
21 to that paragraph, shall apply to any MVPD
22 programming that includes the transmission of
23 live sporting events, irrespective of whether an
24 MVPD has an attributable interest in the
25 MVPD programming vendor engaged in the

1 production, creation, or wholesale distribution
2 of such MVPD programming.

3 “(4) PUBLIC INTEREST DETERMINATIONS ON
4 EXCLUSIVE CONTACTS.—In determining whether an
5 exclusive contract is in the public interest for pur-
6 poses of paragraph (2)(D), the Commission shall
7 consider with respect to the effect of such contract
8 on the distribution of video programming in areas
9 that are served by an MVPD—

10 “(A) the effect of such exclusive contract
11 on the development of competition in local and
12 national multichannel video programming dis-
13 tribution markets;

14 “(B) the effect of such exclusive contract
15 on competition from multichannel video pro-
16 gramming distribution technologies other than
17 cable;

18 “(C) the effect of such exclusive contract
19 on the attraction of capital investment in the
20 production and distribution of new MVPD pro-
21 gramming;

22 “(D) the effect of such exclusive contract
23 on diversity of programming in the multi-
24 channel video programming distribution market;
25 and

1 “(E) the duration of the exclusive contract.

2 “(5) SUNSET PROVISION.—The prohibition re-
3 quired by paragraph (2)(D) shall cease to be effec-
4 tive 10 years after the date of enactment of the
5 Broadband Investment and Consumer Choice Act,
6 unless the Commission finds, in a proceeding con-
7 ducted during the last year of such 10-year period,
8 that such prohibition continues to be necessary to
9 preserve and protect competition and diversity in the
10 distribution of video programming.

11 “(d) ADJUDICATORY PROCEEDING.—

12 “(1) IN GENERAL.—An MVPD aggrieved by
13 conduct that it alleges constitutes a violation of sub-
14 section (b), or the regulations of the Commission
15 under subsection (c), may commence an adjudicatory
16 proceeding at the Commission.

17 “(2) REQUEST FOR PRODUCTION OF AGREE-
18 MENTS.—In any proceeding initiated under para-
19 graph (1), the Commission shall request from a
20 party, and the party shall produce, such agreements
21 between the party and a third party relating to the
22 distribution of MVPD programming that the Com-
23 mission believes to be relevant to its decision regard-
24 ing the matters at issue in such adjudicatory pro-
25 ceeding.

1 “(3) CONFIDENTIALITY TO BE MAINTAINED.—

2 The production of any agreement under paragraph
3 (2) and its use in a Commission decision in the ad-
4 judicatory proceeding under paragraph (1) shall be
5 subject to such provisions ensuring confidentiality as
6 the Commission may by regulation determine.

7 “(e) REMEDIES FOR VIOLATIONS.—

8 “(1) REMEDIES AUTHORIZED.—Upon comple-
9 tion of an adjudicatory proceeding under subsection
10 (d), the Commission shall have the power to order
11 appropriate remedies, including, if necessary, the
12 power to establish prices, terms, and conditions of
13 sale of programming to an aggrieved MVPD.

14 “(2) ADDITIONAL REMEDIES.—The remedies
15 provided under paragraph (1) are in addition to any
16 remedy available to an MVPD under title V or any
17 other provision of this Act.

18 “(f) PROCEDURES.—

19 “(1) IN GENERAL.—The Commission shall pre-
20 scribe regulations to implement this section.

21 “(2) CONTENT OF REGULATIONS.—The regula-
22 tions required under paragraph (1) shall—

23 “(A) provide for an expedited review of
24 any complaints made pursuant to this section,
25 including the issuance of a final order termi-

1 nating such review not later than 120 days
2 after the date on which the complaint was filed;

3 “(B) establish procedures for the Commis-
4 sion to collect such data as the Commission re-
5 quires to carry out this section, including the
6 right to obtain copies of all contracts and docu-
7 ments reflecting arrangements and under-
8 standings alleged to violate this section; and

9 “(C) provide for penalties to be assessed
10 against any person filing a frivolous complaint
11 pursuant to this section.

12 “(g) REPORTS.—The Commission shall, beginning
13 not later than 18 months after promulgation of the regula-
14 tions required by subsection (e), annually report to Con-
15 gress on the status of competition in the market for the
16 delivery of video programming.

17 “(h) EXEMPTIONS FOR PRIOR CONTRACTS.—

18 “(1) IN GENERAL.—Nothing in this section
19 shall affect—

20 “(A) any contract that grants exclusive
21 distribution rights to any person with respect to
22 satellite cable programming and that was en-
23 tered into on or before June 1, 1990; or

24 “(B) any contract that grants exclusive
25 distribution rights to any person with respect to

1 MVPD programming that is not satellite cable
2 programming and that was entered into on or
3 before July 1, 2003, except that the provisions
4 of subsection (c)(2)(C) shall apply for distribu-
5 tion to persons in areas not served by an
6 MVPD.

7 “(2) LIMITATION ON RENEWALS.—

8 “(A) SATELLITE CABLE PROGRAMMING
9 CONTRACTS.—A contract pertaining to satellite
10 cable programming or satellite broadcast pro-
11 gramming that was entered into on or before
12 June 1, 1990, but that is renewed or extended
13 after the date of enactment of the Broadband
14 Investment and Consumer Choice Act shall not
15 be exempt under paragraph (1).

16 “(B) MVPD PROGRAMMING CONTRACTS.—
17 A contract pertaining to MVPD programming
18 that is not satellite cable programming that was
19 entered into on or before July 1, 2003, but that
20 is renewed or extended after the date of enact-
21 ment of the Broadband Investment and Con-
22 sumer Choice Act shall not be exempt under
23 paragraph (1).

24 “(i) DEFINITIONS.—As used in this section:

1 “(1) MVPD.—The term ‘MVPD’ means multi-
2 channel video programming distributor.

3 “(2) MVPD PROGRAMMING.—The term ‘MVPD
4 programming’ includes the following:

5 “(A) DIRECT RECEIPT.—Video program-
6 ming primarily intended for the direct receipt
7 by MVPDs for their retransmission to MVPD
8 subscribers (including any ancillary data trans-
9 mission).

10 “(B) ADDITIONAL PROGRAMMING.—

11 “(i) IN GENERAL.—Additional types
12 of programming content that the Commis-
13 sion determines in a rulemaking pro-
14 ceeding to be completed not later than 120
15 days from the date of enactment of the
16 Broadband Investment and Consumer
17 Choice Act, as of the time of such rule-
18 making, of a type that is—

19 “(I) primarily intended for the
20 direct receipt by MVPDs for their re-
21 transmission to MVPD subscribers,
22 regardless of whether such program-
23 ming content is—

24 “(aa) digital or analog;

1 “(bb) compressed or
2 uncompressed;

3 “(cc) encrypted or
4 unencrypted; or

5 “(dd) provided on a serial,
6 pay-per-view, or on demand
7 basis; and

8 “(II) without regard to the end
9 user device used to access such pro-
10 gramming or the mode of delivery of
11 such programming content to
12 MVPDs.

13 “(ii) CONSIDERATIONS.—In making
14 the determination under clause (i), the
15 Commission shall consider the effect of
16 technologies and services that combine dif-
17 ferent forms of content so that certain con-
18 tent or programming is not included within
19 the meaning of MVPD programming solely
20 because it is integrated with other content
21 that is of a type that is primarily intended
22 for the direct receipt by MVPDs for their
23 retransmission to MVPD subscribers.

24 “(iii) MODIFICATION OF PROGRAM-
25 MING DEFINED AS MVPD PROGRAMMING.—

1 At any time after 3 years following the
2 conclusion of the rulemaking proceeding
3 required under clause (ii), any interested
4 MVPD or MVPD programming vendor
5 may petition the Commission to modify the
6 types of additional programming content
7 included by the Commission within the def-
8 inition of MVPD programming in light
9 of—

10 “(I) the purpose of this section;

11 “(II) market conditions at the
12 time of such petition; and

13 “(III) the factors to be consid-
14 ered by the Commission under clause
15 (ii).

16 “(3) MVPD PROGRAMMING VENDOR.—The
17 term ‘MVPD programming vendor’—

18 “(A) means a person engaged in the pro-
19 duction, creation, or wholesale distribution for
20 sale of MVPD programming; and

21 “(B) does not include a satellite broadcast
22 programming vendor.

23 “(4) SATELLITE BROADCAST PROGRAMMING.—
24 The term ‘satellite broadcast programming’ means
25 broadcast video programming when—

1 “(A) such programming is retransmitted
2 by satellite; and

3 “(B) the entity retransmitting such pro-
4 gramming is not the broadcaster or an entity
5 performing such retransmission on behalf of
6 and with the specific consent of the broad-
7 caster.

8 “(5) SATELLITE BROADCAST PROGRAMMING
9 VENDOR.—The term ‘satellite broadcast program-
10 ming vendor’ means a fixed service satellite carrier
11 that provides service pursuant to section 119 of title
12 17, United States Code, with respect to satellite
13 broadcast programming.

14 “(6) SATELLITE CABLE PROGRAMMING.—The
15 term ‘satellite cable programming’ has the same
16 meaning as in section 705, except that such term
17 does not include satellite broadcast programming.

18 “(7) SATELLITE CABLE PROGRAMMING VEN-
19 DOR.—The term ‘satellite cable programming ven-
20 dor’—

21 “(A) means a person engaged in the pro-
22 duction, creation, or wholesale distribution for
23 sale of satellite cable programming; and

24 “(B) does not include a satellite broadcast
25 programming vendor.

1 “(j) COMMON CARRIERS.—

2 “(1) IN GENERAL.—Any provision that applies
3 to an MVPD under this section shall apply to a com-
4 mon carrier or its affiliate that provides video pro-
5 gramming by any means directly to subscribers.

6 “(2) ATTRIBUTABLE INTEREST.—Any provision
7 that applies to an MVPD programming vendor in
8 which an MVPD has an attributable interest shall
9 apply to any MVPD programming vendor in which
10 such common carrier has an attributable interest.

11 “(3) LIMITATION.—For the purposes of this
12 subsection, 2 or fewer common officers or directors
13 shall not by itself establish an attributable interest
14 by a common carrier in an MVPD programming
15 vendor (or its parent company).”

16 (5) REGULATIONS REQUIRED.—Not later than
17 180 days after the date of enactment of this Act, the
18 Commission shall prescribe such regulations as may
19 be necessary to implement the amendments made by
20 this section.

21 (g) RULEMAKING ON SECTION 629.—Not later than
22 January 1, 2008, the Commission shall conduct a pro-
23 ceeding to determine the appropriateness of the require-
24 ments under subsection (c)(1)(L) taking into account
25 changes and advancements in technology.

1 **SEC. 14. COPYRIGHT LIMITATIONS ON EXCLUSIVE RIGHTS**
2 **VIDEO SERVICE PROVIDERS.**

3 Section 111 of title 17, United States Code, shall for
4 purposes of this Act be deemed to extend to any secondary
5 transmission, as that term is defined in section 111, made
6 by a video service provider.

7 **SEC. 15. MUNICIPALLY OWNED NETWORKS.**

8 (a) **PROTECTION AGAINST UNDUE GOVERNMENT**
9 **COMPETITION WITH PRIVATE SECTOR.**—Any State or
10 local government seeking to provide communications serv-
11 ice shall—

12 (1) provide conspicuous notice of the proposed
13 scope of the communications service to be provided,
14 including—

15 (A) cost;

16 (B) services to be provided;

17 (C) coverage area;

18 (D) terms; and

19 (E) architecture; and

20 (2) give a detailed accounting of all proposed
21 accommodations that such government owned com-
22 munications service would enjoy, including—

23 (A) any free or below cost rights-of-way;

24 (B) any beneficial or preferential tax treat-
25 ment;

1 (C) bonds, grants, or other source of fund-
2 ing unavailable to non-governmental entities;
3 and

4 (D) land, space in buildings, or other con-
5 siderations.

6 (b) OPEN BIDS MUST BE MADE AVAILABLE FOR
7 NON-GOVERNMENTAL ENTITIES.—Not later than 90 days
8 after posting of the notice required under subsection
9 (a)(1), a non-governmental entity shall have the option of
10 participating in an open bidding process conducted by a
11 neutral third party to provide such communications serv-
12 ice on the same terms, conditions, financing, rights-of-
13 way, land, space, and accommodations as secured by the
14 State or local government.

15 (c) PREFERENCE FOR NON-GOVERNMENTAL ENTI-
16 TIES.—In the event of identical bids under subsection (b),
17 the neutral third party conducting the bidding process
18 shall give preference to a non-governmental entity.

19 (d) OPEN ACCESS TO NON-GOVERNMENTAL ENTI-
20 TIES.—If a State or local government wins the bid under
21 subsection (b), a non-governmental entity shall have the
22 ability to place facilities in the same conduit, trenches, and
23 locations as the State or local government for concurrent
24 or future use under the same conditions secured by the
25 State or local government.

1 (e) GRANDFATHER CLAUSE.—A State or local gov-
2 ernment providing communications service as of the date
3 of enactment of this Act shall be exempt from this section,
4 unless such State or local government—

5 (1) substantially enters into new lines of busi-
6 ness; or

7 (2) substantially expands its communications
8 service beyond its current service area, as such serv-
9 ice area existed upon the date of enactment of this
10 Act.