

109TH CONGRESS
1ST SESSION

S. 1504

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

JULY 27, 2005

Mr. ENSIGN (for himself and Mr. McCAIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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.

1 (6) The United States is falling behind the
2 world in broadband penetration and it must encour-
3 age investment to regain a leadership position in the
4 world.

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

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

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

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

21 (11) In the event that market failure leads
22 State or local governments to contemplate construc-
23 tion of their own communications services, the op-
24 tion to enter that market should first be provided to
25 commercial providers under similar terms to ensure

1 that such governments are not competing unneces-
2 sarily with private industry.

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

6 **SEC. 3. GENERAL PRINCIPLE.**

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

14 (A) titles I, II, and VI or section 332 of
15 the Communications Act of 1934 (47 U.S.C.
16 151 et seq.);

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

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

24 (2) LIMITATION ON GOVERNMENT AUTHOR-
25 ITY.—Notwithstanding any other provision of Fed-

1 eral, State, or local law, and except as provided in
 2 this Act, no Federal, State, or local government
 3 shall have authority—

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

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

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

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

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

22 (A) IN GENERAL.—Nothing in this Act
 23 shall be construed to affect the authority of the
 24 Commission under sections 206, 207, 208, 209,

1 224, 225, 226, 227, 229, 230, 253, and 255 of
2 the Communications Act of 1934.

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

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

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

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

1 (7) REGULATORY TREATMENT OF MOBILE
2 SERVICES.—

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

14 (i) because of the lack of competition
15 among providers of such service; or

16 (ii) for the protection of public health
17 and safety.

18 (B) PETITION FOR FORBEARANCE.—

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

(ii) 1-YEAR REVIEW PERIOD.—Not later than 1 year after the Commission receives a petition submitted under clause (i), such petition shall be deemed granted if the Commission does not deny the petition on either of the grounds described in subparagraph (A), unless such 1-year period is extended by the Commission.

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

(iv) AUTHORITY OF COMMISSION.—The Commission—

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

(II) shall explain its decision in writing.

(8) REGULATORY TREATMENT OF SEAMLESS MOBILITY.—

(A) IN GENERAL.—In implementing the provisions of this Act or any other proceeding,

1 the Commission shall not take any action to im-
 2 pede the development of seamless mobility.

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

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

15 **SEC. 4. DEFINITIONS.**

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

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

19 (A) means a single-line flat rate voice com-
 20 munications service—

21 (i) within a traditional local calling
 22 area;

23 (ii) with access to 911;

24 (iii) with touch tone dialing; and

25 (iv) with access to long distance; and

1 (B) does not include any interexchange
2 communications wireline service.

3 (2) BROADBAND COMMUNICATIONS SERVICE.—
4 The term “broadband communications service”
5 means a communications service enabling the trans-
6 mission of communications at a capacity greater
7 than 64 kilobits per second.

8 (3) COMMISSION.—The term “Commission”
9 means the Federal Communications Commission.

10 (4) COMMUNICATIONS SERVICE.—The term
11 “communications service”—

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

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

25 (B) does not include—

1 (i) television or radio broadcasting;

2 and

3 (ii) any service that is not provided to

4 the public or to a substantial portion of the

5 public.

6 (5) CONSUMER.—The term “consumer”—

7 (A) means a consumer of goods or services

8 whether for a fee, in exchange for an explicit

9 benefit, or provided for free; and

10 (B) includes—

11 (i) an end user of communications

12 service;

13 (ii) individuals;

14 (iii) partnerships;

15 (iv) associations;

16 (v) joint-stock companies;

17 (vi) trusts; and

18 (vii) corporations.

19 (6) COPPER LOOPS.—The term “copper loops”

20 means an entirely copper cable transmission facility

21 used to provide circuit switched services, between a

22 distribution frame (or its equivalent) in the central

23 office of an incumbent local exchange carrier and the

24 loop demarcation point at the premise of a con-

25 sumer.

1 (7) ELIGIBLE TELECOMMUNICATIONS CARRIER;
 2 ETC.—The term “eligible telecommunications car-
 3 rier” or “ETC” means a telecommunications carrier
 4 that has been determined, under section 214(e) of
 5 the Communications Act of 1934 (47 U.S.C.
 6 214(e)), to be eligible for Federal universal service
 7 support.

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

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

16 (10) INCUMBENT LOCAL EXCHANGE CAR-
 17 RIER.—The term “Incumbent Local Exchange Car-
 18 rier” has the meaning given to such term in section
 19 251(h) of the Communications Act of 1934 (47
 20 U.S.C. 251(h)).

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

1 (12) NARROWBAND COMMUNICATIONS SERV-
2 ICE.—The term “narrowband communications serv-
3 ice” means a communications service enabling the
4 transmission of communications at a capacity of not
5 more than 64 kilobits per second.

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

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

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

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

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

25 (A) video programming;

1 (B) interactive on demand services; and

2 (C) other programming services.

3 (18) VIDEO SERVICE PROVIDER.—The term
4 “video service provider”—

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

8 (B) does not include—

9 (i) a satellite carrier;

10 (ii) any person providing video pro-
11 gramming using radio communication;

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

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

22 (b) COMMON TERMINOLOGY.—Except as otherwise
23 provided in subsection (a), terms used in this Act shall
24 have the same meaning given to such terms under sections

1 3, 332(d), and 602 of the Communications Act of 1934
 2 (47 U.S.C. 153, 332(d), and 522).

3 **SEC. 5. CONSUMER COMMUNICATIONS SERVICE.**

4 (a) BASIC TELEPHONE SERVICE SAFETY NET.—

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

11 (b) RATE CAP.—

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

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

19 (A) subscriber line and universal service
 20 charges; and

21 (B) other similar taxes and fees.

22 (3) ANNUAL ADJUSTMENT.—After January 1,
 23 2010, BTS rate caps may be adjusted annually by
 24 the incumbent local exchange carrier by an amount

1 not to exceed any adjustment in the Consumer Price
2 Index.

3 (c) EXPANSION OF BTS.—An incumbent local ex-
4 change carrier or an ETC may expand or modify the serv-
5 ices it provides in its BTS offering, if such expansion or
6 modification results in a BTS offering that is equal or
7 more favorable to consumers.

8 (d) BTS TECHNOLOGY.—

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

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

22 (e) TERMINATION OF BTS.—If a consumer purchases
23 any service, capability, or function in addition to a BTS
24 offering, the resulting offering shall not—

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

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

3 (f) CARRIER OF LAST RESORT OBLIGATIONS.—Any
4 carrier of last resort obligation under the Communications
5 Act of 1934 (47 U.S.C. 151 et seq.) or any equivalent
6 State law, regulation, or order shall be satisfied, subject
7 to the exceptions provided in such section, by the ubiq-
8 uitous availability of BTS to all consumers in a service
9 territory.

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

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

- 17 (1) reasonable uptime;
18 (2) installation intervals;
19 (3) repair intervals; and
20 (4) suitable voice quality.

21 (b) ADDITIONAL STANDARDS.—The Commission
22 shall establish reasonable maximum intervals for the per-
23 formance of different classes of incumbent local exchange
24 carriers.

25 (c) ENFORCEMENT.—

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

5 (2) LIMITATION.—

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

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

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

21 (4) PENALTIES.—

22 (A) IN GENERAL.—Notwithstanding any
23 other provision of this Act, any ETC or incum-
24 bent local exchange carrier that violates the
25 standards established under subsections (a) and

1 (b) shall be subject to a civil penalty not to ex-
 2 ceed \$50 per household for the first violation.

3 (B) SUBSEQUENT VIOLATIONS.—Subse-
 4 quent violations by any ETC or incumbent local
 5 exchange carrier of the standards established
 6 under subsections (a) and (b) shall increase at
 7 intervals of \$50 per violation per household up
 8 to a maximum of \$500.

9 (C) ANNUAL ADJUSTMENT.—The amount
 10 of penalties provided under this section shall be
 11 adjusted annually by an amount equal to any
 12 adjustment in the Consumer Price Index.

13 (D) PENALTY TO BE PAID TO CON-
 14 SUMERS.—

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

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

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), the
 4 Commission shall—

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

7 (2) assume exclusive enforcement authority.

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

14 **SEC. 7. CONSUMER ACCESS TO CONTENT AND APPLICA-**
 15 **TIONS.**

16 (a) ACCESS.—

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

23 (A) such content is determined to be ille-
 24 gal;

1 (B) such denial is expressly authorized by
 2 Federal or State law; or

3 (C) such access is inconsistent with the
 4 terms of the service plan of such consumer in-
 5 cluding applicable bandwidth capacity or quality
 6 of service constraints.

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

13 (A) access to content;

14 (B) the availability of applications; and

15 (C) the character of service components
 16 available.

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

22 (b) ENFORCEMENT OF ACCESS VIOLATIONS.—

23 (1) IN GENERAL.—The Commission may take
 24 such enforcement action as it may prescribe by rule,
 25 if the Commission determines that a broadband

1 communications service provider intentionally re-
 2 stricted access to any content described in sub-
 3 section (a)(1).

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

9 (A) performing network—

10 (i) optimization or management;

11 (ii) security; or

12 (iii) prioritization;

13 (B) performing other measures to ensure
 14 network security and integrity; or

15 (C) attempting to prevent unlawful con-
 16 duct.

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

19 (1) any communications service provider from
 20 offering a service that allows a consumer to block
 21 display of programs with a common rating; and

22 (2) a provider of mobile services from offering
 23 or providing access only to a family friendly service
 24 to a subscriber.

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

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

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

10 (a) FEDERAL POLICY.—The Commission shall, with
 11 respect to communication service providers, develop rules
 12 and regulations regarding—

13 (1) automatic dialing, telephone solicitation,
 14 slamming, cramming, E911, obscene and harassing
 15 telephone calls;

16 (2) billing disputes;

17 (3) the use, sale, and distribution of consumer
 18 proprietary network information; and

19 (4) access for persons with disabilities, includ-
 20 ing—

21 (A) the hearing impaired; and

22 (B) the speech impaired.

23 (b) COMMISSION RULES.—

24 (1) IN GENERAL.—In developing the rules re-
 25 quired under subsection (a), the Commission shall

1 take into account the technical limitations of the
2 technology used by communications service pro-
3 viders.

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

12 (A) remain in effect; and

13 (B) be applicable to the matters described
14 in subsection (a).

15 (c) ENFORCEMENT.—

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

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

1 (3) LIMITATION ON CLASS ACTIONS.—No class
 2 action alleging a violation of the rules and regula-
 3 tions set forth under subsection (a) shall be main-
 4 tained under this subsection by an individual or any
 5 private party in Federal or State court.

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

14 (A) enjoin the act or practice;

15 (B) obtain—

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

20 (ii) punitive damages, if the violation
 21 is willful or intentional; or

22 (C) obtain such other legal and equitable
 23 relief as the court may consider to be appro-
 24 priate.

25 (5) VENUE; SERVICE OF PROCESS.—

1 (A) VENUE.—Any action brought under
 2 this subsection may be brought in the district
 3 court of the United States that meets applicable
 4 requirements relating to venue under section
 5 1931 of title 28, United States Code.

6 (B) SERVICE OR PROCESS.—In an action
 7 brought under this subsection, process may be
 8 served in any district in which the defendant—
 9 (i) is an inhabitant; or
 10 (ii) may be found.

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

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

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

22 (2) assume exclusive enforcement authority.

23 **SEC. 9. NETWORK INTERCONNECTION AND ACCESS RE-**
 24 **QUIREMENTS.**

25 (a) INTERCONNECTION ARRANGEMENTS.—

1 (1) IN GENERAL.—Facilities-based providers
 2 shall establish commercial arrangements regarding
 3 the ability of such facilities-based providers to inter-
 4 connect with other facilities-based providers.

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

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

15 (b) COMMISSION INTERVENTION WITH
 16 NARROWBAND COMMUNICATION SERVICE PROVIDERS.—

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

22 (2) SCOPE OF REGULATORY FRAMEWORK.—The
 23 regulatory framework described in paragraph (1)
 24 shall apply only in connection with the termination

1 or origination of traffic on narrowband communica-
2 tion service providers facilities.

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

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

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

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

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

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

3 (A) shall establish reasonable and equitable
4 points of interconnection;

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

9 (C) shall eliminate arbitrage opportunities;

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

13 (E) may not unduly burden electronic com-
14 merce.

15 (c) TRANSITING SERVICE.—

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

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

23 (3) EXEMPTION FROM REGULATION.—Except
24 as provided in paragraphs (4) and (5), the commer-
25 cial arrangements described in paragraphs (1) and

1 (2) may not be subject to regulation by the Commis-
 2 sion or by the States or State commissions.

3 (4) COMMISSION INTERVENTION FOR
 4 TRANSITING SERVICE.—

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

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

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

22 (6) NO COMPENSATION OBLIGATION.—
 23 Transiting service providers shall have no obligation
 24 to compensate any party to an indirect interconnec-

1 tion of narrowband communications service providers
 2 for the delivery of any transited traffic.

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

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

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

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

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

22 (1) such traffic; and

23 (2) the origin of such traffic.

24 (g) EQUAL ACCESS.—Nothing in this Act shall re-
 25 quire any communications service provider, or any other

1 person, that was not required on the date of enactment
 2 of this Act to provide equal access to common carriers for
 3 the provision of telephone toll services to provide such
 4 equal access.

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

7 (a) INCUMBENT LOCAL EXCHANGE CARRIER OBLI-
 8 GATIONS.—

9 (1) UNBUNDLED ACCESS.—

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

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

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

24 (2) COLLOCATION.—

1 (A) IN GENERAL.—An incumbent local ex-
 2 change carrier shall provide physical collocation
 3 at the central office of such carrier for access
 4 to unbundled copper loops.

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

10 (3) RESALE.—

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

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

17 (i) be established by the Commission;

18 and

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

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

23 (c) REPORT.—Not later than January 1, 2009, the
 24 Commission shall submit to Congress a detailed report,

1 with recommendations, on whether the obligations estab-
2 lished under subsection (a) are in the public interest.

3 **SEC. 11. NUMBER PORTABILITY.**

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

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

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

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

18 (a) OPT IN/OPT OUT.—

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

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

4 (b) RURAL EXEMPTION.—If a communications serv-
5 ice provider that is also a rural telephone company, as that
6 term is defined in section 3 of the Communications Act
7 of 1934 (47 U.S.C. 153), elects under subsection (a) to
8 continue to be subject to the regulatory requirements in
9 existence on the date of enactment of this Act, such com-
10 munications service provider shall retain its rural exemp-
11 tion pursuant to section 251(f) of the Communications Act
12 of 1934 (47 U.S.C. 251(f)).

13 (c) NECA TARIFFS UNAFFECTED.—Nothing in this
14 section precludes or affects any tariff filed by the National
15 Exchange Carrier Association, and any such tariff may
16 continue to include—

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

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

21 (d) NEGOTIATION AUTHORITY OF NECA.—For the
22 purpose of conducting and concluding commercial negotia-
23 tions regarding interconnection arrangements, the Na-
24 tional Exchange Carrier Association is authorized to be
25 the negotiating agent for any 2-percent carrier wishing to

1 use the National Exchange Carrier Association for such
 2 purpose.

3 **SEC. 13. VIDEO SERVICES.**

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

6 (1) to obtain a State or local video franchise;

7 (2) to build out its video distribution system in
 8 any particular manner; or

9 (3) to provide leased or common carrier access
 10 to its video distribution facilities and equipment to
 11 any other video service provider.

12 (b) STATE AND LOCAL GOVERNMENT AUTHORITY TO
 13 REGULATE.—

14 (1) REASONABLE FEE.—

15 (A) COMPENSATING LOCAL GOVERN-
 16 MENTS.—

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

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

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

6 (i) means all consideration of any
 7 kind or nature received by a video service
 8 provider from its subscribers for the provi-
 9 sion of video service within a municipality,
 10 including—

11 (I) cash;

12 (II) credits;

13 (III) property; and

14 (IV) in-kind contributions (serv-
 15 ices or goods); and

16 (ii) does not include—

17 (I) revenue not actually received,
 18 even if billed, including bad debt;

19 (II) revenue received by any affil-
 20 iate or any other person in exchange
 21 for supplying goods or services used
 22 by a video service provider to provide
 23 video service;

24 (III) refunds, rebates, or dis-
 25 counts provided to—

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

1 through any home shopping channel
2 offered as part of the video service;

3 (VI) the sale of video service for
4 resale in which the purchaser of such
5 service is required to collect a 5 per-
6 cent fee from the customer of such
7 purchaser;

8 (VII) any tax of general applica-
9 bility—

10 (aa) imposed upon a video
11 service provider or upon sub-
12 scribers by a Federal, State, city,
13 or any other governmental entity;
14 and

15 (bb) required to be collected
16 by a video service provider and
17 remitted to the taxing entity, in-
18 cluding—

19 (AA) sales or use taxes;

20 (BB) gross receipts
21 taxes;

22 (CC) excise taxes;

23 (DD) utility users
24 taxes;

1 (EE) public service
 2 taxes;
 3 (FF) communication
 4 taxes; and
 5 (GG) the 5 percent fee
 6 described in subclause (VI);
 7 (VIII) the provision of video serv-
 8 ice to public institutions, public
 9 schools, or governmental entities at no
 10 charge;
 11 (IX) any foregone revenue from
 12 the provision of free or reduced-cost
 13 video service by a video service pro-
 14 vider to any person, including—
 15 (aa) the municipality;
 16 (bb) other public institu-
 17 tions; and
 18 (cc) other institutions;
 19 (X) sales of capital assets or
 20 sales of surplus equipment;
 21 (XI) reimbursement by program-
 22 mers of marketing costs incurred by a
 23 video service provider for the intro-
 24 duction or promotion of programming;

1 (XII) directory or Internet adver-
 2 tising revenue, including revenue
 3 from—

4 (aa) yellow page sales;
 5 (bb) white page sales;
 6 (cc) banner advertisement;
 7 and
 8 (dd) electronic publishing;
 9 and

10 (XIII) copyright fees paid to the
 11 United States Copyright Office.

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

18 (A) by the Commission; or

19 (B) by filing a claim in the district court
 20 of the United States that meets applicable re-
 21 quirements relating to venue under section
 22 1931 of title 28, United States Code.

23 (3) STATE ADJUSTMENT OF FEES AND
 24 TAXES.—

1 (A) IN GENERAL.—A video service provider
 2 may petition the Commission for a reduction of
 3 the fee paid by such provider under this sub-
 4 section, if a State adjusts the fees and taxes
 5 paid by communications service providers or
 6 their customers for the purpose of—

7 (i) providing fairness;

8 (ii) equality of treatment; or

9 (iii) simplification of the fees and
 10 taxes of such providers relative to each
 11 other or to other commercial and industrial
 12 tax payers in general within such State.

13 (B) COMMISSION ACTION ON PETITION.—
 14 The Commission shall act on any petition de-
 15 scribed in subparagraph (A) not later than 60
 16 days after its receipt.

17 (C) GRANT OF PETITION.—The Commis-
 18 sion shall grant a petition described in subpara-
 19 graph (A) if and to the extent it determines
 20 that the fees paid by a video service provider
 21 should be reduced in order to achieve the pur-
 22 poses of fairness, equality of treatment, or sim-
 23 plification described in subparagraph (A).

24 (4) FEE APPEARANCE ON SUBSCRIBER'S
 25 BILL.—A video service provider may designate that

1 portion of a subscriber's bill attributable to a video
2 service fee as a separate item on the subscriber's
3 bill.

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

6 (1) OBLIGATIONS AND DUTIES.—Any video
7 service provider shall—

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

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

15 (C) carry and determine the appropriate
16 channel positioning and grouping of, within
17 each local franchise area, not more than 4 pub-
18 lic, educational, or governmental use channels
19 as required under section 611 of such Act (47
20 U.S.C. 531);

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

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

4 (F) be subject to the regulation of carriage
5 agreements under section 616 of such Act (47
6 U.S.C. 536);

7 (G) be subject to the requirements regard-
8 ing obscene or indecent programming under
9 section 624(d)(2) of such Act (47 U.S.C.
10 544(d)(2));

11 (H) be entitled to the benefits and protec-
12 tions under section 624(f)(1) of such Act (47
13 U.S.C. 544(f)(1)) regarding the content of
14 video service;

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

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

21 (K) be entitled to the benefits and protec-
22 tions under section 628 of such Act (47 U.S.C.
23 548);

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

1 (M) protect the personally identifiable in-
2 formation of its subscribers in the same manner
3 as is required of cable operators with respect to
4 subscribers to cable services under section 631
5 of such Act (47 U.S.C. 551);

6 (N) be entitled to the benefits and protec-
7 tions under section 633 of such Act (47 U.S.C.
8 553);

9 (O) be subject to the equal employment
10 provisions as required under subsections (a)
11 through (h) of section 634 of such Act (47
12 U.S.C. 554);

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

15 (Q) be subject to the penalties prescribed
16 for the transmission of obscene programming
17 under section 639 of such Act (47 U.S.C. 559);
18 and

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

22 (2) DETERMINATIONS OF LOCAL SIGNALS.—
23 For purposes of complying with subparagraphs (C)
24 and (D) of paragraph (1), a video service provider
25 shall treat as local stations with respect to a cus-

1 tomer located within the jurisdiction of any fran-
 2 chising authority the same stations that are treated
 3 as local television stations for a cable system located
 4 within such jurisdiction.

5 (3) IMPLEMENTATION.—

6 (A) REGULATIONS REQUIRED.—Not later
 7 than 120 days after the date of enactment of
 8 this Act, the Commission shall prescribe regula-
 9 tions to implement the requirements of para-
 10 graph (1) that are no greater or lesser than the
 11 obligations required by the specifically ref-
 12 erenced provisions of the Communications Act
 13 of 1934 (47 U.S.C. 151 et seq.).

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 (4) EXISTING FRANCHISES.—

19 (A) IN GENERAL.—Any provision in any
 20 franchise granted by a franchising authority
 21 that is inconsistent with the provisions of this
 22 Act shall be deemed to be preempted and super-
 23 seded.

24 (B) TREATMENT AS A VIDEO SERVICE
 25 PROVIDER.—A cable operator operating under

1 the authority of any franchise described in sub-
2 paragraph (A) prior to the date of enactment of
3 this Act shall be treated as a video service pro-
4 vider under this Act.

5 (5) CABLE CHANNELS FOR PUBLIC, EDU-
6 CATIONAL, AND GOVERNMENTAL USE.—The govern-
7 mental entity that was the franchising authority for
8 a State or a political subdivision of a State on the
9 date of enactment of this Act, shall for that State
10 or political subdivision determine which public, edu-
11 cational, or governmental entities shall be authorized
12 to designate the channels required under paragraph
13 (1)(C).

14 (6) CONSUMER PROTECTION AND CUSTOMER
15 SERVICE.—

16 (A) REGULATIONS REQUIRED.—Not later
17 than 120 days after the date of enactment of
18 this Act, the Commission shall establish regula-
19 tions with respect to customer service and con-
20 sumer protection requirements of the video
21 service provider.

22 (B) EFFECTIVE DATE OF REGULATIONS.—
23 The regulations required under subparagraph
24 (A) shall take effect 6 months after the date of
25 enactment of this Act.

1 (7) STATE COMMISSION AUTHORITY.—

2 (A) IN GENERAL.—Notwithstanding any
3 other provision of this Act, a State commission
4 shall have the authority to enforce the require-
5 ments of paragraph (6)(A).

6 (B) LOCAL POINT OF CONTACT.—Each
7 State commission shall designate a local point
8 of contact, which residents of such geographic
9 area may contact to alert such State commis-
10 sion of any potential violations of the require-
11 ments and obligations established under para-
12 graph (6)(A).

13 (C) LIMITATION ON CLASS ACTIONS.—No
14 class action alleging a violation of the obliga-
15 tions set forth in the regulations established by
16 the Commission under paragraph (6)(A) shall
17 be maintained under this subsection by an indi-
18 vidual or any private party in Federal or State
19 court.

20 (D) PARENS PATRIAE AUTHORITY.—In
21 any case in which a State commission has rea-
22 son to believe that an act or practice violates
23 the obligations set forth in the regulations es-
24 tablished by the Commission under paragraph
25 (6)(A), the State commission may bring a civil

1 action on behalf of the residents within its ju-
 2 risdiction in a district court of the United
 3 States of appropriate jurisdiction, or any other
 4 court of competent jurisdiction, to—

5 (i) enjoin the act or practice;

6 (ii) obtain—

7 (I) damages in the sum of actual
 8 damages, restitution, or other com-
 9 pensation on behalf of affected resi-
 10 dents of the State; and

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

13 (iii) obtain such other legal and equi-
 14 table relief as the court may consider to be
 15 appropriate.

16 (E) VENUE; SERVICE OF PROCESS.—

17 (i) VENUE.—Any action brought
 18 under this paragraph may be brought in
 19 the district court of the United States that
 20 meets applicable requirements relating to
 21 venue under section 1931 of title 28,
 22 United States Code.

23 (ii) SERVICE OR PROCESS.—In an ac-
 24 tion brought under this paragraph, process

1 may be served in any district in which the
2 defendant—

3 (I) is an inhabitant; or

4 (II) may be found.

5 (F) LIMITATION.—A State commission
6 that is authorized to enforce the requirements
7 of paragraph (6) may not be authorized to im-
8 pose additional obligations beyond those estab-
9 lished by the Commission in paragraph (6)(A).

10 (d) COMMISSION TO ACT IF STATE COMMISSION
11 WILL NOT ACT.—If a State commission fails to carry out
12 its enforcement responsibilities under subsection (c)(7),
13 the Commission shall—

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

16 (2) assume exclusive enforcement authority.

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

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

22 (A) non-discriminatory;

23 (B) competitively neutral; and

24 (C) consistent with applicable State law.

25 (2) CONSTRUCTION PERMITS.—

1 (A) IN GENERAL.—In managing the public
2 rights-of-way a State or local government may
3 require the issuance of a construction permit,
4 without cost, to a video service provider that is
5 locating facilities in such public right-of-way.

6 (B) RESPONSE WORK OR REPAIR.—If
7 there is an emergency necessitating response
8 work or repair in the public right-of-way, a
9 video service provider may begin such work or
10 repair without prior approval from a State or
11 local government, if such provider notifies the
12 State or local government as promptly as pos-
13 sible after beginning such work or repair.

14 (3) TIMELY ACTION REQUIRED.—In managing
15 the public rights-of-way a State or local government
16 that is required to issue permits or licenses for such
17 use shall be required to act upon any such request
18 for use in a timely manner.

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

23 (f) CONFORMING AMENDMENTS TO THE COMMU-
24 NICATIONS ACT OF 1934.—

1 (1) POLE ATTACHMENTS.—Section 224 of the
 2 Communications Act of 1934 (47 U.S.C. 224) is
 3 amended—

4 (A) in subsection (a)(1), by striking “local
 5 exchange carrier” and inserting “telecommuni-
 6 cations carrier”;

7 (B) by striking subsections (a)(5) and
 8 (d)(3);

9 (C) in subsection (d)(3), in the first sen-
 10 tence by striking all after “cable television sys-
 11 tem” through the period at the end and insert-
 12 ing “and facilities of other video service pro-
 13 viders, regardless of the nature of the services
 14 provided.”; and

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

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

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

23 “(4) SIGNAL QUALITY.—

24 “(A) NON-DEGRADATION.—The signals of
 25 local commercial television stations that a cable

1 operator carries shall be carried without mate-
 2 rial degradation.

3 “(B) CARRIAGE STANDARDS.—The Com-
 4 mission shall adopt carriage standards to en-
 5 sure that, to the extent technically feasible, the
 6 quality of signal processing and carriage pro-
 7 vided by a cable system for the carriage of local
 8 commercial television stations will be no less
 9 than that provided by the system for carriage of
 10 any other type of broadcast local commercial
 11 television signal when using the same trans-
 12 mission technology.”.

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

17 “(2) BANDWIDTH AND TECHNICAL QUALITY.—A
 18 cable operator shall—

19 “(A) provide each qualified local non-com-
 20 mercial television station whose signal is carried
 21 in accordance with this section with bandwidth
 22 and technical capacity equivalent to that pro-
 23 vided to commercial television stations carried
 24 on the cable system when using the same trans-
 25 mission technology; and

1 “(B) carry the signal of each qualified
2 local non-commercial educational television station
3 without material degradation.”.

4 (4) DEVELOPMENT OF COMPETITION AND DI-
5 VERSITY IN VIDEO PROGRAMMING DISTRIBUTION.—

6 Section 628 of the Communications Act of 1934 (47
7 U.S.C. 548) is amended to read as follows:

8 **“SEC. 628. DEVELOPMENT OF COMPETITION AND DIVER-**
9 **SITY IN VIDEO PROGRAMMING DISTRIBUTION.**
10 **TION.**

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

12 “(1) to promote the public interest, conven-
13 ience, and necessity by increasing competition and
14 diversity in the multichannel video programming
15 market;

16 “(2) to increase the availability of MVPD pro-
17 gramming and satellite broadcast programming to
18 persons in rural and other areas not currently able
19 to receive such programming; and

20 “(3) to spur the development of communica-
21 tions technologies.

22 “(b) PROHIBITION.—It shall be unlawful for an
23 MVPD, an MVPD programming vendor in which an
24 MVPD has an attributable interest, or a satellite broad-
25 cast programming vendor to engage in unfair methods of

1 competition or unfair or deceptive acts or practices, the
 2 purpose or effect of which is to hinder significantly or to
 3 prevent any MVPD from providing MVPD programming
 4 or satellite broadcast programming to subscribers or con-
 5 sumers.

6 “(c) REGULATIONS REQUIRED.—

7 “(1) PROCEEDING REQUIRED.—Not later than
 8 180 days after the date of enactment of the
 9 Broadband Investment and Consumer Choice Act,
 10 the Commission shall prescribe regulations to specify
 11 particular conduct that is prohibited by subsection
 12 (b), in order to promote—

13 “(A) the public interest, convenience, and
 14 necessity by increasing competition and diver-
 15 sity in the multichannel video programming
 16 market; and

17 “(B) the continuing development of com-
 18 munications technologies.

19 “(2) MINIMUM CONTENTS OF REGULATION.—

20 The regulations required under paragraph (1)
 21 shall—

22 “(A) establish effective safeguards to pre-
 23 vent an MVPD which has an attributable inter-
 24 est in an MVPD programming vendor or a sat-
 25 ellite broadcast programming vendor from un-

1 duly or improperly influencing the decision of
2 such vendor to sell, or the prices, terms, and
3 conditions of sale of, MVPD programming or
4 satellite broadcast programming to any unaffili-
5 ated MVPD;

6 “(B) prohibit discrimination by an MVPD
7 programming vendor in which an MVPD has an
8 attributable interest or by a satellite broadcast
9 programming vendor in the prices, terms, and
10 conditions of sale or delivery of MVPD pro-
11 gramming or satellite broadcast programming
12 among or between cable systems, cable opera-
13 tors, or other MVPDs, or their agents or buy-
14 ing groups, except that an MVPD programming
15 vendor in which an MVPD has an attributable
16 interest or such a satellite broadcast program-
17 ming vendor shall not be prohibited from—

18 “(i) imposing reasonable requirements
19 for—

20 “(I) creditworthiness;

21 “(II) offering of service; and

22 “(III) financial stability and

23 standards regarding character and

24 technical quality;

1 “(ii) establishing different prices,
2 terms, and conditions to take into account
3 actual and reasonable differences in the
4 cost of creation, sale, delivery, or trans-
5 mission of MVPD programming or satellite
6 broadcast programming;

7 “(iii) establishing different prices,
8 terms, and conditions which take into ac-
9 count economies of scale, cost savings, or
10 other direct and legitimate economic bene-
11 fits reasonably attributable to the number
12 of subscribers served by the distributor; or

13 “(iv) entering into an exclusive con-
14 tract that is permitted under subparagraph
15 (D);

16 “(C) prohibit practices, understandings,
17 arrangements, and activities, including exclusive
18 contracts for MVPD programming or satellite
19 broadcast programming between an MVPD and
20 an MVPD programming vendor or satellite
21 broadcast programming vendor, that prevent an
22 MVPD from obtaining such programming from
23 any MVPD programming vendor in which an
24 MVPD has an attributable interest or any sat-
25 ellite broadcast programming vendor in which

1 an MVPD has an attributable interest for dis-
2 tribution to persons in areas not served by an
3 MVPD as of the date of enactment of the
4 Broadband Investment and Consumer Choice
5 Act; and

6 “(D) with respect to distribution to per-
7 sons in areas served by an MVPD, prohibit ex-
8 clusive contracts for MVPD programming or
9 satellite broadcast programming between an
10 MVPD and an MVPD programming vendor in
11 which an MVPD has an attributable interest or
12 a satellite broadcast programming vendor in
13 which an MVPD has an attributable interest,
14 unless the Commission determines (in accord-
15 ance with paragraph (4)) that such contract is
16 in the public interest.

17 “(3) LIMITATIONS.—

18 “(A) GEOGRAPHIC LIMITATIONS.—Nothing
19 in this section shall require any person who is
20 engaged in the national or regional distribution
21 of video programming to make such program-
22 ming available in any geographic area beyond
23 which such programming has been authorized
24 or licensed for distribution.

1 “(B) APPLICABILITY TO SATELLITE RE-
2 TRANSMISSIONS.—Nothing in this section shall
3 apply—

4 “(i) to the signal of any broadcast af-
5 filiate of a national television network or
6 other television signal that is retransmitted
7 by satellite but that is not satellite broad-
8 cast programming; or

9 “(ii) to any internal satellite commu-
10 nication of any broadcast network or cable
11 network that is not satellite broadcast pro-
12 gramming.

13 “(C) EXCLUSION OF INDIVIDUAL VIDEO
14 PROGRAMS.—Nothing in this section shall apply
15 to a specific individual video program produced
16 by an MVPD for local distribution by that
17 MVPD and not made available directly or indi-
18 rectly to unaffiliated MVPDs, if—

19 “(i) all other video programming car-
20 ried on a programming channel or network
21 on which the individual video program is
22 carried, is made available to unaffiliated
23 MVPDs pursuant to paragraph (2)(D);
24 and

1 “(ii) such specific individual video
2 program is not the transmission of a sport-
3 ing event.

4 “(D) MVPD SPORTS PROGRAMMING.—The
5 prohibition set forth in paragraph (2)(D), and
6 the rules adopted by the Commission pursuant
7 to that paragraph, shall apply to any MVPD
8 programming that includes the transmission of
9 live sporting events, irrespective of whether an
10 MVPD has an attributable interest in the
11 MVPD programming vendor engaged in the
12 production, creation, or wholesale distribution
13 of such MVPD programming.

14 “(4) PUBLIC INTEREST DETERMINATIONS ON
15 EXCLUSIVE CONTACTS.—In determining whether an
16 exclusive contract is in the public interest for pur-
17 poses of paragraph (2)(D), the Commission shall
18 consider with respect to the effect of such contract
19 on the distribution of video programming in areas
20 that are served by an MVPD—

21 “(A) the effect of such exclusive contract
22 on the development of competition in local and
23 national multichannel video programming dis-
24 tribution markets;

1 “(B) the effect of such exclusive contract
 2 on competition from multichannel video pro-
 3 gramming distribution technologies other than
 4 cable;

5 “(C) the effect of such exclusive contract
 6 on the attraction of capital investment in the
 7 production and distribution of new MVPD pro-
 8 gramming;

9 “(D) the effect of such exclusive contract
 10 on diversity of programming in the multi-
 11 channel video programming distribution market;
 12 and

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

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

23 “(d) ADJUDICATORY PROCEEDING.—

24 “(1) IN GENERAL.—An MVPD aggrieved by
 25 conduct that it alleges constitutes a violation of sub-

1 section (b), or the regulations of the Commission
2 under subsection (c), may commence an adjudicatory
3 proceeding at the Commission.

4 “(2) REQUEST FOR PRODUCTION OF AGREE-
5 MENTS.—In any proceeding initiated under para-
6 graph (1), the Commission shall request from a
7 party, and the party shall produce, such agreements
8 between the party and a third party relating to the
9 distribution of MVPD programming that the Com-
10 mission believes to be relevant to its decision regard-
11 ing the matters at issue in such adjudicatory pro-
12 ceeding.

13 “(3) CONFIDENTIALITY TO BE MAINTAINED.—
14 The production of any agreement under paragraph
15 (2) and its use in a Commission decision in the ad-
16 judicatory proceeding under paragraph (1) shall be
17 subject to such provisions ensuring confidentiality as
18 the Commission may by regulation determine.

19 “(e) REMEDIES FOR VIOLATIONS.—

20 “(1) REMEDIES AUTHORIZED.—Upon comple-
21 tion of an adjudicatory proceeding under subsection
22 (d), the Commission shall have the power to order
23 appropriate remedies, including, if necessary, the
24 power to establish prices, terms, and conditions of
25 sale of programming to an aggrieved MVPD.

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

5 “(f) PROCEDURES.—

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

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

10 “(A) provide for an expedited review of
11 any complaints made pursuant to this section,
12 including the issuance of a final order termi-
13 nating such review not later than 120 days
14 after the date on which the complaint was filed;

15 “(B) establish procedures for the Commis-
16 sion to collect such data as the Commission re-
17 quires to carry out this section, including the
18 right to obtain copies of all contracts and docu-
19 ments reflecting arrangements and under-
20 standings alleged to violate this section; and

21 “(C) provide for penalties to be assessed
22 against any person filing a frivolous complaint
23 pursuant to this section.

24 “(g) REPORTS.—The Commission shall, beginning
25 not later than 18 months after promulgation of the regula-

1 tions required by subsection (c), annually report to Con-
 2 gress on the status of competition in the market for the
 3 delivery of video programming.

4 “(h) EXEMPTIONS FOR PRIOR CONTRACTS.—

5 “(1) IN GENERAL.—Nothing in this section
 6 shall affect—

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

11 “(B) any contract that grants exclusive
 12 distribution rights to any person with respect to
 13 MVPD programming that is not satellite cable
 14 programming and that was entered into on or
 15 before July 1, 2003, except that the provisions
 16 of subsection (c)(2)(C) shall apply for distribu-
 17 tion to persons in areas not served by an
 18 MVPD.

19 “(2) LIMITATION ON RENEWALS.—

20 “(A) SATELLITE CABLE PROGRAMMING
 21 CONTRACTS.—A contract pertaining to satellite
 22 cable programming or satellite broadcast pro-
 23 gramming that was entered into on or before
 24 June 1, 1990, but that is renewed or extended
 25 after the date of enactment of the Broadband

1 Investment and Consumer Choice Act shall not
 2 be exempt under paragraph (1).

3 “(B) MVPD PROGRAMMING CONTRACTS.—
 4 A contract pertaining to MVPD programming
 5 that is not satellite cable programming that was
 6 entered into on or before July 1, 2003, but that
 7 is renewed or extended after the date of enact-
 8 ment of the Broadband Investment and Con-
 9 sumer Choice Act shall not be exempt under
 10 paragraph (1).

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

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

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

16 “(A) DIRECT RECEIPT.—Video program-
 17 ming primarily intended for the direct receipt
 18 by MVPDs for their retransmission to MVPD
 19 subscribers (including any ancillary data trans-
 20 mission).

21 “(B) ADDITIONAL PROGRAMMING.—

22 “(i) IN GENERAL.—Additional types
 23 of programming content that the Commis-
 24 sion determines in a rulemaking pro-
 25 ceeding to be completed not later than 120

1 days from the date of enactment of the
2 Broadband Investment and Consumer
3 Choice Act, as of the time of such rule-
4 making, of a type that is—

5 “(I) primarily intended for the
6 direct receipt by MVPDs for their re-
7 transmission to MVPD subscribers,
8 regardless of whether such program-
9 ming content is—

10 “(aa) digital or analog;

11 “(bb) compressed or
12 uncompressed;

13 “(cc) encrypted or
14 unencrypted; or

15 “(dd) provided on a serial,
16 pay-per-view, or on demand
17 basis; and

18 “(II) without regard to the end
19 user device used to access such pro-
20 gramming or the mode of delivery of
21 such programming content to
22 MVPDs.

23 “(ii) CONSIDERATIONS.—In making
24 the determination under clause (i), the
25 Commission shall consider the effect of

1 technologies and services that combine dif-
2 ferent forms of content so that certain con-
3 tent or programming is not included within
4 the meaning of MVPD programming solely
5 because it is integrated with other content
6 that is of a type that is primarily intended
7 for the direct receipt by MVPDs for their
8 retransmission to MVPD subscribers.

9 “(iii) MODIFICATION OF PROGRAM-
10 MING DEFINED AS MVPD PROGRAMMING.—

11 At any time after 3 years following the
12 conclusion of the rulemaking proceeding
13 required under clause (ii), any interested
14 MVPD or MVPD programming vendor
15 may petition the Commission to modify the
16 types of additional programming content
17 included by the Commission within the def-
18 inition of MVPD programming in light
19 of—

20 “(I) the purpose of this section;

21 “(II) market conditions at the
22 time of such petition; and

23 “(III) the factors to be consid-
24 ered by the Commission under clause
25 (ii).

1 “(3) MVPD PROGRAMMING VENDOR.—The
2 term ‘MVPD programming vendor’—

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

6 “(B) does not include a satellite broadcast
7 programming vendor.

8 “(4) SATELLITE BROADCAST PROGRAMMING.—
9 The term ‘satellite broadcast programming’ means
10 broadcast video programming when—

11 “(A) such programming is retransmitted
12 by satellite; and

13 “(B) the entity retransmitting such pro-
14 gramming is not the broadcaster or an entity
15 performing such retransmission on behalf of
16 and with the specific consent of the broad-
17 caster.

18 “(5) SATELLITE BROADCAST PROGRAMMING
19 VENDOR.—The term ‘satellite broadcast program-
20 ming vendor’ means a fixed service satellite carrier
21 that provides service pursuant to section 119 of title
22 17, United States Code, with respect to satellite
23 broadcast programming.

24 “(6) SATELLITE CABLE PROGRAMMING.—The
25 term ‘satellite cable programming’ has the same

1 meaning as in section 705, except that such term
 2 does not include satellite broadcast programming.

3 “(7) SATELLITE CABLE PROGRAMMING VEN-
 4 DOR.—The term ‘satellite cable programming ven-
 5 dor’—

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

9 “(B) does not include a satellite broadcast
 10 programming vendor.

11 “(j) COMMON CARRIERS.—

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

16 “(2) ATTRIBUTABLE INTEREST.—Any provision
 17 that applies to an MVPD programming vendor in
 18 which an MVPD has an attributable interest shall
 19 apply to any MVPD programming vendor in which
 20 such common carrier has an attributable interest.

21 “(3) LIMITATION.—For the purposes of this
 22 subsection, 2 or fewer common officers or directors
 23 shall not by itself establish an attributable interest
 24 by a common carrier in an MVPD programming
 25 vendor (or its parent company).”.

1 (5) REGULATIONS REQUIRED.—Not later than
 2 180 days after the date of enactment of this Act, the
 3 Commission shall prescribe such regulations as may
 4 be necessary to implement the amendments made by
 5 this section.

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

11 **SEC. 14. COPYRIGHT LIMITATIONS ON EXCLUSIVE RIGHTS**

12 **VIDEO SERVICE PROVIDERS.**

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

17 **SEC. 15. MUNICIPALLY OWNED NETWORKS.**

18 (a) PROTECTION AGAINST UNDUE GOVERNMENT
 19 COMPETITION WITH PRIVATE SECTOR.—Any State or
 20 local government seeking to provide communications serv-
 21 ice shall—

22 (1) provide conspicuous notice of the proposed
 23 scope of the communications service to be provided,
 24 including—

25 (A) cost;

1 (B) services to be provided;

2 (C) coverage area;

3 (D) terms; and

4 (E) architecture; and

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

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

9 (B) any beneficial or preferential tax treat-
10 ment;

11 (C) bonds, grants, or other source of fund-
12 ing unavailable to non-governmental entities;
13 and

14 (D) land, space in buildings, or other con-
15 siderations.

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

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

5 (d) OPEN ACCESS TO NON-GOVERNMENTAL ENTI-
 6 TIES.—If a State or local government wins the bid under
 7 subsection (b), a non-governmental entity shall have the
 8 ability to place facilities in the same conduit, trenches, and
 9 locations as the State or local government for concurrent
 10 or future use under the same conditions secured by the
 11 State or local government.

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

16 (1) substantially enters into new lines of busi-
 17 ness; or

18 (2) substantially expands its communications
 19 service beyond its current service area, as such serv-
 20 ice area existed upon the date of enactment of this
 21 Act.

○