

S 1504 IS

109th CONGRESS

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Broadband Investment and Consumer Choice Act'.

(b) Table of Contents- The table of contents for 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.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) Since passage of the Telecommunications Act of 1996, there have been dramatic changes in the industry, technology, and marketplace requiring Congress to revisit the communications policy of the Nation.
- (2) Inter-modal competition is bringing consumers more choice in voice, data, and video service options than ever before.
- (3) A new policy framework is required to allow functionally equivalent services to compete fairly.
- (4) Silos of regulation based on historical regulatory classifications only invite arbitrage and result in government influenced market distortions.
- (5) Such market distortions coupled with lack of regulatory certainty is chilling investment and stalling deployment of broadband networks.
- (6) The United States is falling behind the world in broadband penetration and it must encourage investment to regain a leadership position in the world.
- (7) Communications networks are global in nature and the United States must eliminate barriers for domestic communications providers to compete in the global marketplace.
- (8) As the United States transitions to a market driven communications service sector, consumers should be protected with a safety net of access to affordable Basic Telephone Service.
- (9) A new communications framework should foster consumer value and choice by unleashing markets, in lieu of government-managed competition.

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

(11) In the event that market failure leads State or local governments to contemplate construction of their own communications services, the option to enter that market should first be provided to commercial providers under similar terms to ensure that such governments are not competing unnecessarily with private industry.

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

SEC. 3. GENERAL PRINCIPLE.

(1) **APPLICABILITY OF THE COMMUNICATIONS ACT OF 1934-** Except as provided in this Act, any conduct, activity, service, or service provider shall on or after the date of enactment of this Act, be subject only to the requirements of this Act, if such conduct, activity, service, or service provider was, before the date of enactment of this Act, subject to--

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

(B) any equivalent State common carrier law or regulation with respect to telecommunications, telecommunications services, or information services; or

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

(2) **LIMITATION ON GOVERNMENT AUTHORITY-** Notwithstanding any other provision of Federal, State, or local law, and except as provided in this Act, no Federal, State, or local government shall have authority--

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

(B) to require any facilities-based communications service provider to provide third parties with access to its facilities; or

(C) to regulate the rates, terms, and conditions, if any, on which a facilities-based communications service provider chooses to afford third parties with access to its facilities.

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

(4) **AFFECT ON CERTAIN PROVISIONS OF TITLE II OF THE COMMUNICATIONS ACT OF 1934-**

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

(B) AUTHORITY STILL VALID- Except as provided otherwise in this Act, any conduct, activity, service, or service provider subject to this Act shall be subject to the authority and the requirements of the provisions of the Communications Act of 1934 described in subparagraph (A).

(5) NO AFFECT ON STATE LAWS OF GENERAL APPLICABILITY- Nothing in this Act is intended to affect State laws of general applicability to all businesses, except to the extent that such laws are inconsistent with this Act.

(6) DIRECT-TO-HOME SATELLITE SERVICES- No State or local government shall have the authority to regulate through franchise agreements or otherwise direct-to-home satellite services, including any activity, conduct, or matter concerning--

- (A) rates;
- (B) services;
- (C) billing;
- (D) equipment; and
- (E) sales.

(7) REGULATORY TREATMENT OF MOBILE SERVICES-

(A) FORBEARANCE- The Commission shall forbear from applying any regulation, provision, or requirement imposed by this Act or the Communications Act of 1934 to a mobile service or persons or classes of persons engaged in the provision of such service, to the extent such persons are engaged in the provision of such service, in all of the geographic markets served by such service, unless the Commission determines that enforcement of such regulation or provision is necessary--

- (i) because of the lack of competition among providers of such service; or
- (ii) for the protection of public health and safety.

(B) PETITION FOR FORBEARANCE-

(i) IN GENERAL- Any provider or class of providers of a mobile service may submit a petition to the Commission requesting that the Commission exercise the authority granted under subparagraph (A) with respect to that provider or class of 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, the Commission shall not take any action to impede the development of seamless mobility.

(B) DEFINITION- For purposes of this paragraph, the term 'seamless mobility' means the ability of a consumer and connecting devices of consumer to move easily and smoothly between and among internet protocol enabled technology platforms, facilities, and networks.

(9) RULEMAKING- The Commission shall have authority to establish rules to implement the provisions of paragraphs (3) and (4) that are no greater or lesser than the requirements contained in the titles described in paragraph (3) and the sections described in paragraph (4).

SEC. 4. DEFINITIONS.

(a) In General- For purposes of this Act:

(1) BASIC TELEPHONE SERVICE; BTS- The term 'Basic Telephone Service' or 'BTS'--

(A) means a single-line flat rate voice communications service--

(i) within a traditional local calling area;

(ii) with access to 911;

(iii) with touch tone dialing; and

(iv) with access to long distance; and

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

(2) BROADBAND COMMUNICATIONS SERVICE- The term 'broadband communications service' means a communications service enabling the trans- mission of

communications at a capacity greater than 64 kilobits per second.

(3) COMMISSION- The term `Commission' means the Federal Communications Commission.

(4) COMMUNICATIONS SERVICE- The term `communications service'--

(A) means any service enabling an end user to transmit, receive, store, forward, retrieve, modify, or obtain voice, data, image, or video communications using any technology, including--

- (i) copper;
- (ii) coaxial cable;
- (iii) optical fiber;
- (iv) terrestrial fixed wireless;
- (v) terrestrial mobile wireless;
- (vi) satellite;
- (vii) power lines; or
- (viii) successor technologies; and

(B) does not include--

- (i) television or radio broadcasting; and
- (ii) any service that is not provided to the public or to a substantial portion of the public.

(5) CONSUMER- The term `consumer'--

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

(B) includes--

- (i) an end user of communications service;
- (ii) individuals;
- (iii) partnerships;
- (iv) associations;

(v) joint-stock companies;

(vi) trusts; and

(vii) corporations.

(6) COPPER LOOPS- The term 'copper loops' means an entirely copper cable transmission facility used to provide circuit switched services, between a distribution frame (or its equivalent) in the central office of an incumbent local exchange carrier and the loop demarcation point at the premise of a consumer.

(7) ELIGIBLE TELECOMMUNICATIONS CARRIER; ETC- The term 'eligible telecommunications carrier' or 'ETC' means a telecommunications carrier that has been determined, under section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)), to be eligible for Federal universal service support.

(8) FACILITIES-BASED PROVIDER- The term 'facilities-based provider' means a provider of a communications service to the extent that such provider makes available such communications service predominantly by means of its own network.

(9) FRANCHISE- The term 'franchise' has the meaning given to such term in section 602 (9) of the Communications Act of 1934 (47 U.S.C. 522(9)).

(10) INCUMBENT LOCAL EXCHANGE CARRIER- The term 'Incumbent Local Exchange Carrier' has the meaning given to such term in section 251(h) of the Communications Act of 1934 (47 U.S.C. 251(h)).

(11) INTERCONNECTION- The term 'interconnection' means the physical linking of 2 networks whether directly or indirectly for the mutual exchange of non video traffic.

(12) NARROWBAND COMMUNICATIONS SERVICE- The term 'narrowband communications service' means a communications service enabling the transmission of communications at a capacity of not more than 64 kilobits per second.

(13) PUBLIC SWITCHED TELEPHONE NETWORK- The term 'public switched telephone network' means the collection of interconnected circuit switched telecommunications.

(14) SATELLITE CARRIER- The term 'satellite carrier' has the meaning given to such term in section 119(d)(6) of title 17, United States Code.

(15) TRANSITING SERVICE- The term 'transiting service' means a service provided by a facilities-based provider which facilitates the indirect interconnection between 2 other facilities-based providers on the circuit switched network.

(16) 2-PERCENT CARRIER- The term '2-percent carrier' means an incumbent local exchange provider which serves in aggregate less than 2 percent of the access lines of the Nation on the date of enactment this Act.

(17) VIDEO SERVICE- The term 'video service' means--

- (A) video programming;
- (B) interactive on demand services; and
- (C) other programming services.

(18) VIDEO SERVICE PROVIDER- The term 'video service provider'--

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

(B) does not include--

- (i) a satellite carrier;
- (ii) any person providing video programming using radio communication;
- (iii) any other provider of video service that does not use a public right-of-way in the provision of its service; or
- (iv) any person providing video service by means of a commercial mobile service, unless such person has substantially replaced a video service provider described in subparagraph (A) by occupying a position in the video service market comparable to that occupied by such provider.

(b) Common Terminology- Except as otherwise provided in subsection (a), terms used in this Act shall have the same meaning given to such terms under sections 3, 332(d), and 602 of the Communications Act of 1934 (47 U.S.C. 153, 332(d), and 522).

SEC. 5. CONSUMER COMMUNICATIONS SERVICE.

(a) Basic Telephone Service Safety Net- Each telecommunications carrier that is deemed to be an incumbent local exchange carrier on the date of enactment of this Act and any ETC shall offer BTS to business and residential customers throughout the service territory of such incumbent local exchange carrier, as such service territory was defined on the date of enactment of this Act.

(b) Rate Cap-

(1) IN GENERAL- Until January 1, 2010, BTS rates charged by an incumbent local exchange carrier shall be capped at current basic local residential or business rates.

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

- (A) subscriber line and universal service charges; and
- (B) other similar taxes and fees.

(3) ANNUAL ADJUSTMENT- After January 1, 2010, BTS rate caps may be adjusted annually by the incumbent local exchange carrier by an amount not to exceed any

adjustment in the Consumer Price Index.

(c) Expansion of BTS- An incumbent local exchange carrier or an ETC may expand or modify the services it provides in its BTS offering, if such expansion or modification results in a BTS offering that is equal or more favorable to consumers.

(d) BTS Technology-

(1) IN GENERAL- An incumbent local exchange carrier or an ETC may determine the technology it uses to meet its BTS obligations under this section, if such technology does not alter the rates, terms, and conditions for a BTS offering required under subsection (b).

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

(e) Termination of Bts- If a consumer purchases any service, capability, or function in addition to a BTS offering, the resulting offering shall not--

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

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

(f) Carrier of Last Resort Obligations- Any carrier of last resort obligation under the Communications Act of 1934 (47 U.S.C. 151 et seq.) or any equivalent State law, regulation, or order shall be satisfied, subject to the exceptions provided in such section, by the ubiquitous availability of BTS to all consumers in a service territory.

SEC. 6. FEDERAL QUALITY STANDARDS.

(a) Quality Standards- The Commission, taking into consideration that different technologies can potentially be used to provide BTS service and that such technologies may have different performance characteristics than a public switched telephone network, shall establish Federal quality standards for BTS service relating to--

(1) reasonable uptime;

(2) installation intervals;

(3) repair intervals; and

(4) suitable voice quality.

(b) Additional Standards- The Commission shall establish reasonable maximum intervals for the performance of different classes of incumbent local exchange carriers.

(c) Enforcement-

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

(2) LIMITATION-

(A) IN GENERAL- The regulatory power granted to a State commission under this subsection shall apply only to the enforcement of the Federal standards under subsections (a) and (b).

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

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

(4) PENALTIES-

(A) IN GENERAL- Notwithstanding any other provision of this Act, any ETC or incumbent local exchange carrier that violates the standards established under subsections (a) and (b) shall be subject to a civil penalty not to exceed \$50 per household for the first violation.

(B) SUBSEQUENT VIOLATIONS- Subsequent violations by any ETC or incumbent local exchange carrier of the standards established under subsections (a) and (b) shall increase at intervals of \$50 per violation per household up to a maximum of \$500.

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

(D) PENALTY TO BE PAID TO CONSUMERS-

(i) IN GENERAL- All penalties collected under authority of this section shall be paid to consumers that are directly affected by the failure to comply with the standards established under subsections (a) and (b).

(ii) EXCLUSIVE REMEDY- The penalties established under authority of this section shall be the exclusive remedy for failure to comply with the standards established under subsections (a) and (b).

(d) Commission to Act if State Commission Will Not Act- If a State commission fails to carry out its enforcement responsibilities under subsection (c), the Commission shall--

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

(2) assume exclusive enforcement authority.

(e) Lifeline Assistance- Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

SEC. 7. CONSUMER ACCESS TO CONTENT AND APPLICATIONS.

(a) Access-

(1) IN GENERAL- A consumer may not be denied access to any content provided over facilities used to provide broadband communications service and a broadband service provider shall not willfully and knowingly block access to such content by a subscriber, unless--

(A) such content is determined to be illegal;

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

(C) such access is inconsistent with the terms of the service plan of such consumer including applicable bandwidth capacity or quality of service constraints.

(2) CUSTOMIZED CONTENT- A broadband communications service provider may offer to a consumer a customized plan developed through such service providers network or commercial arrangements with providers of content, applications, and other service components to differentiate--

(A) access to content;

(B) the availability of applications; and

(C) the character of service components available.

(3) NON-CUSTOMIZED CONTENT- Nothing in subsection (a) shall adversely affect the performance of non-customized consumer access to content, services, and applications offered by the competitors of a broadband service provider.

(b) Enforcement of Access Violations-

(1) IN GENERAL- The Commission may take such enforcement action as it may prescribe by rule, if the Commission determines that a broadband communications service provider intentionally restricted access to any content described in subsection (a)(1).

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

(A) performing network--

(i) optimization or management;

(ii) security; or

(iii) prioritization;

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

(C) attempting to prevent unlawful conduct.

(c) Parental Controls- Nothing in this section shall be construed to prohibit--

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

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

(d) Connectivity of Devices- Except as provided in this section, a broadband service provider shall not prevent any person from utilizing equipment and devices in connection with lawful content or applications.

(e) Access to VoIP Applications- Nothing in subsection (a) shall permit a broadband service provider to prevent a customer from using voice over Internet Protocol applications offered by a competitor.

SEC. 8. REGULATORY AUTHORITY OF THE COMMISSION.

(a) Federal Policy- The Commission shall, with respect to communication service providers, develop rules and regulations regarding--

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

(2) billing disputes;

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

(4) access for persons with disabilities, including--

(A) the hearing impaired; and

(B) the speech impaired.

(b) Commission Rules-

(1) IN GENERAL- In developing the rules required under subsection (a), the Commission shall take into account the technical limitations of the technology used by communications service providers.

(2) TIMING- Not later than 120 days after the date of enactment of this Act, the

Commission shall establish the rules required under subsection (a), and until such rules become effective, the requirements of Federal law, including all prior Commission rules and orders in effect on the date of enactment of this Act relating to the matters described in subsection (a) shall--

(A) remain in effect; and

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

(c) Enforcement-

(1) STATE COMMISSION AUTHORITY- Notwithstanding any other provisions of this Act, a State commission shall have authority to enforce the rules established by the Commission pursuant to this section.

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

(3) LIMITATION ON CLASS ACTIONS- No class action alleging a violation of the rules and regulations set forth under subsection (a) shall be maintained under this subsection by an individual or any private party in Federal or State court.

(4) PARENS PATRIAE AUTHORITY- In any case in which a State commission has reason to believe that an act or practice violates the rules and regulations set forth under subsection (a), the State commission may bring a civil action on behalf of the residents of that State in a district court of the United States of appropriate jurisdiction, or any other court of competent jurisdiction, to--

(A) enjoin the act or practice;

(B) obtain--

(i) damages in the sum of actual damages, restitution, or other compensation on behalf of affected residents of the State; and

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

(C) obtain such other legal and equitable relief as the court may consider to be appropriate.

(5) VENUE; SERVICE OF PROCESS-

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

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

(i) is an inhabitant; or

(ii) may be found.

(d) **Limitation of State Authority-** Notwithstanding the provisions of this section, States and State commissions shall have no authority to impose different or additional interconnection or intercarrier compensation requirements on communication service providers.

(e) **Commission to Act if State Commission Will Not Act-** If a State commission fails to carry out its enforcement responsibilities under subsection (c), the Commission shall--

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

(2) assume exclusive enforcement authority.

SEC. 9. NETWORK INTERCONNECTION AND ACCESS REQUIREMENTS.

(a) **Interconnection Arrangements-**

(1) **IN GENERAL-** Facilities-based providers shall establish commercial arrangements regarding the ability of such facilities-based providers to interconnect with other facilities-based providers.

(2) **SCOPE OF ARRANGEMENTS-** The commercial arrangements described in paragraph (1) shall establish the rates, terms, and conditions on which facilities-based providers shall interconnect with other facilities-based providers.

(3) **EXEMPTION FROM REGULATION-** Except as provided in subsections (b) and (c), the commercial arrangements described in paragraph (1) may not be subject to regulation by the Commission or by the States or State commissions.

(b) **Commission Intervention With Narrowband Communication Service Providers-**

(1) **IN GENERAL-** Not later than 6 months after the date of enactment of this Act, the Commission shall develop a regulatory framework governing interconnection between facilities-based providers and narrowband communication service providers.

(2) **SCOPE OF REGULATORY FRAMEWORK-** The regulatory framework described in paragraph (1) shall apply only in connection with the termination or origination of traffic on narrowband communication service providers facilities.

(3) **UNIFORM RATE STRUCTURE-** The regulatory framework described in paragraph (1)--

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

(B) shall apply only in the event narrowband communication service providers cannot agree on the rates, terms, and conditions of interconnection between facilities-based providers and such narrowband communication service providers; and

(C) may not require the Commission to use any particular rate-making methodology in establishing the uniform rate structure required by this paragraph.

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

(5) CONTENTS OF FRAMEWORK- The regulatory framework described in paragraph (1)--

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

(B) shall facilitate narrowband communication service providers efforts to innovate and introduce new services and packages of services to consumers;

(C) shall eliminate arbitrage opportunities;

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

(E) may not unduly burden electronic commerce.

(c) Transiting Service-

(1) IN GENERAL- Transiting service providers shall establish commercial arrangements with respect to transiting services.

(2) SCOPE OF ARRANGEMENTS- The commercial arrangements described in paragraph (1) shall establish the rates, terms, and conditions for transiting service.

(3) EXEMPTION FROM REGULATION- Except as provided in paragraphs (4) and (5), the commercial arrangements described in paragraphs (1) and (2) may not be subject to regulation by the Commission or by the States or State commissions.

(4) COMMISSION INTERVENTION FOR TRANSITING SERVICE-

(A) ESTABLISHMENT OF REGULATORY FRAMEWORK- Not later than 6 months after the date of enactment of this Act, the Commission shall develop a regulatory framework governing transiting service.

(B) APPLICABILITY OF REGULATORY FRAMEWORK- The regulatory framework developed under subparagraph (A) shall apply only in the event agreement cannot be reached on the rates, terms, and conditions for transiting service pursuant to paragraphs (1) and (2).

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

(6) NO COMPENSATION OBLIGATION- Transiting service providers shall have no obligation to compensate any party to an indirect interconnection of narrowband communications service providers for the delivery of any transited traffic.

(d) Sunset of Regulatory Framework- The regulatory frameworks established under subsections (b) and (c) shall terminate on the day occurring 5 years after the date of enactment of this Act.

(e) Notice of Changes- A facilities-based provider of communications service shall provide reasonable public notice of--

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

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

(f) Identification of Traffic- Any party seeking to use a facilities-based provider of communications service network to route their traffic through another facilities-based provider of communications service shall, to the extent technically feasible and in a manner consistent with applicable industry standards, identify--

(1) such traffic; and

(2) the origin of such traffic.

(g) Equal Access- Nothing in this Act shall require any communications service provider, or any other person, that was not required on the date of enactment of this Act to provide equal access to common carriers for the provision of telephone toll services to provide such equal access.

SEC. 10. UNBUNDLED ACCESS TO COPPER LOOPS, PHYSICAL COLLOCATION, AND RESALE.

(a) Incumbent Local Exchange Carrier Obligations-

(1) UNBUNDLED ACCESS-

(A) IN GENERAL- An incumbent local exchange carrier shall provide unbundled access to copper local loops on commercially reasonable rates, terms, and conditions.

(B) COMMISSION TO RESOLVE DISPUTES- The Commission shall resolve any disputes regarding unbundled access to copper loops as described in subparagraph (A).

(C) EXEMPTION- Except as provided in subparagraph (A), no facilities-based provider of communications service shall have any obligation to provide unbundled access to any of its facilities, equipment, or support systems, either individually or in combination.

(2) COLLOCATION-

(A) IN GENERAL- An incumbent local exchange carrier shall provide physical collocation at the central office of such carrier for access to unbundled copper loops.

(B) VIRTUAL COLLOCATION- If the physical collocation described in subparagraph (A) is not practical for technical reasons or due to space limitations, virtual collocation for access to unbundled copper loops shall be required.

(3) RESALE-

(A) IN GENERAL- An incumbent local exchange carrier shall provide resale of any local narrowband communications service that is subject to regulation under this Act.

(B) RESALE RATE- The resale rate applicable to subparagraph (A) shall--

(i) be established by the Commission; and

(ii) equal the retail rate for such services less the costs actually avoided.

(b) Sunset- The obligations established under subsection (a) shall terminate on January 1, 2011.

(c) Report- Not later than January 1, 2009, the Commission shall submit to Congress a detailed report, with recommendations, on whether the obligations established under subsection (a) are in the public interest.

SEC. 11. NUMBER PORTABILITY.

(a) In General- All communications service providers that use numbers or the successor system assigned by the North American Numbering Plan, or any such successor entity, shall provide number portability to consumers.

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

(c) Rulemaking Proceeding- The Commission may commence a rulemaking proceeding if the Commission finds that excessive early cancellation fees charged by communications service providers are hindering the ability of consumers to change providers.

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

(a) Opt In/Opt Out-

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

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

(b) Rural Exemption- If a communications service provider that is also a rural telephone company,

as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153), elects under subsection (a) to continue to be subject to the regulatory requirements in existence on the date of enactment of this Act, such communications service provider shall retain its rural exemption pursuant to section 251(f) of the Communications Act of 1934 (47 U.S.C. 251(f)).

(c) NECA Tariffs Unaffected- Nothing in this section precludes or affects any tariff filed by the National Exchange Carrier Association, and any such tariff may continue to include--

- (1) all tariffed services in effect on the date of enactment of this Act; and
- (2) any new service or modifications to existing service typically covered by such tariffs.

(d) Negotiation Authority of NECA- For the purpose of conducting and concluding commercial negotiations regarding interconnection arrangements, the National Exchange Carrier Association is authorized to be the negotiating agent for any 2-percent carrier wishing to use the National Exchange Carrier Association for such purpose.

SEC. 13. VIDEO SERVICES.

(a) Video Service Providers- A video service provider may not be required--

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

(b) State and Local Government Authority to Regulate-

(1) REASONABLE FEE-

(A) COMPENSATING LOCAL GOVERNMENTS-

(i) IN GENERAL- A State or local government may require a video service provider to pay a reasonable video service fee on an annual basis to the units of local government in which the video service provider provides video service for the purpose of compensating such local government for the costs that it incurs in managing the public rights-of-way used by such provider.

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

(B) DEFINITION- For purposes of this paragraph, the term `gross revenues'--

(i) means all consideration of any kind or nature received by a video service provider from its subscribers for the provision of video service within a municipality, including--

(I) cash;

(II) credits;

(III) property; and

(IV) in-kind contributions (services or goods); and

(ii) does not include--

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

(II) revenue received by any affiliate or any other person in exchange for supplying goods or services used by a video service provider to provide video service;

(III) refunds, rebates, or discounts provided to--

(aa) subscribers;

(bb) leased access providers;

(cc) advertisers; or

(dd) the municipality;

(IV) revenue from services not classified as video service, including--

(aa) revenue received from telecommunications services;

(bb) revenue received from information services;

(cc) revenue received in connection with advertising;

(dd) revenue received in connection with home shopping services; or

(ee) any other revenue attributed by a video service provider to non-video service in accordance with any applicable rules, regulations, standards, or orders;

(V) revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the video service;

(VI) the sale of video service for resale in which the purchaser of such service is required to collect a 5 percent fee from the customer of such purchaser;

(VII) any tax of general applicability--

(aa) imposed upon a video service provider or upon subscribers by a Federal, State, city, or any other governmental entity; and

(bb) required to be collected by a video service provider and remitted to the taxing entity, including--

(AA) sales or use taxes;

(BB) gross receipts taxes;

(CC) excise taxes;

(DD) utility users taxes;

(EE) public service taxes;

(FF) communication taxes; and

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

(VIII) the provision of video service to public institutions, public schools, or governmental entities at no charge;

(IX) any foregone revenue from the provision of free or reduced-cost video service by a video service provider to any person, including--

(aa) the municipality;

(bb) other public institutions; and

(cc) other institutions;

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

(XI) reimbursement by programmers of marketing costs incurred by a video service provider for the introduction or promotion of programming;

(XII) directory or Internet advertising revenue, including revenue from--

(aa) yellow page sales;

(bb) white page sales;

(cc) banner advertisement; and

(dd) electronic publishing; and

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

(2) RIGHTS-OF-WAY DISPUTES TO BE RESOLVED BY THE COMMISSION OR FEDERAL COURTS- Any dispute regarding the application or amount of fees charged under paragraph (1) shall, upon request of a local unit of government or affected video

service provider, be resolved--

(A) by the Commission; or

(B) by filing a claim in the district court of the United States that meets applicable requirements relating to venue under section 1931 of title 28, United States Code.

(3) STATE ADJUSTMENT OF FEES AND TAXES-

(A) IN GENERAL- A video service provider may petition the Commission for a reduction of the fee paid by such provider under this subsection, if a State adjusts the fees and taxes paid by communications service providers or their customers for the purpose of--

(i) providing fairness;

(ii) equality of treatment; or

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

(B) COMMISSION ACTION ON PETITION- The Commission shall act on any petition described in subparagraph (A) not later than 60 days after its receipt.

(C) GRANT OF PETITION- The Commission shall grant a petition described in subparagraph (A) if and to the extent it determines that the fees paid by a video service provider should be reduced in order to achieve the purposes of fairness, equality of treatment, or simplification described in subparagraph (A).

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

(c) Applicability of Title VI of the Communications Act; Cable Act Provisions-

(1) OBLIGATIONS AND DUTIES- Any video service provider shall--

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

(B) be subject to the retransmission consent obligations of section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b));

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

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

- (E) carry the signals of local noncommercial educational television stations as required under section 615 of such Act (47 U.S.C. 535);
- (F) be subject to the regulation of carriage agreements under section 616 of such Act (47 U.S.C. 536);
- (G) be subject to the requirements regarding obscene or indecent programming under section 624(d)(2) of such Act (47 U.S.C. 544(d)(2));
- (H) be entitled to the benefits and protections under section 624(f)(1) of such Act (47 U.S.C. 544(f)(1)) regarding the content of video service;
- (I) be subject to the emergency information requirements under section 624(g) of such Act (47 U.S.C. 544(g));
- (J) be subject to the consumer electronics equipment capability requirements under section 624A of such Act (47 U.S.C. 545);
- (K) be entitled to the benefits and protections under section 628 of such Act (47 U.S.C. 548);
- (L) be subject to the requirements under section 629 of such Act (47 U.S.C. 549);
- (M) protect the personally identifiable information of its subscribers in the same manner as is required of cable operators with respect to subscribers to cable services under section 631 of such Act (47 U.S.C. 551);
- (N) be entitled to the benefits and protections under section 633 of such Act (47 U.S.C. 553);
- (O) be subject to the equal employment provisions as required under subsections (a) through (h) of section 634 of such Act (47 U.S.C. 554);
- (P) be subject to criminal or civil liability under section 638 of such Act (47 U.S.C. 558);
- (Q) be subject to the penalties prescribed for the transmission of obscene programming under section 639 of such Act (47 U.S.C. 559); and
- (R) be required to comply with the scrambling requirements under section 640 of such Act (47 U.S.C. 560).

(2) DETERMINATIONS OF LOCAL SIGNALS- For purposes of complying with subparagraphs (C) and (D) of paragraph (1), a video service provider shall treat as local stations with respect to a customer located within the jurisdiction of any franchising authority the same stations that are treated as local television stations for a cable system located within such jurisdiction.

(3) IMPLEMENTATION-

(A) REGULATIONS REQUIRED- Not later than 120 days after the date of enactment of this Act, the Commission shall prescribe regulations to implement the requirements of paragraph (1) that are no greater or lesser than the obligations required by the specifically referenced provisions of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

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

(4) EXISTING FRANCHISES-

(A) IN GENERAL- Any provision in any franchise granted by a franchising authority that is inconsistent with the provisions of this Act shall be deemed to be preempted and superseded.

(B) TREATMENT AS A VIDEO SERVICE PROVIDER- A cable operator operating under the authority of any franchise described in subparagraph (A) prior to the date of enactment of this Act shall be treated as a video service provider under this Act.

(5) CABLE CHANNELS FOR PUBLIC, EDUCATIONAL, AND GOVERNMENTAL USE- The governmental entity that was the franchising authority for a State or a political subdivision of a State on the date of enactment of this Act, shall for that State or political subdivision determine which public, educational, or governmental entities shall be authorized to designate the channels required under paragraph (1)(C).

(6) CONSUMER PROTECTION AND CUSTOMER SERVICE-

(A) REGULATIONS REQUIRED- Not later than 120 days after the date of enactment of this Act, the Commission shall establish regulations with respect to customer service and consumer protection requirements of the video service provider.

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

(7) STATE COMMISSION AUTHORITY-

(A) IN GENERAL- Notwithstanding any other provision of this Act, a State commission shall have the authority to enforce the requirements of paragraph (6)(A).

(B) LOCAL POINT OF CONTACT- Each State commission shall designate a local point of contact, which residents of such geographic area may contact to alert such State commission of any potential violations of the requirements and obligations established under paragraph (6)(A).

(C) LIMITATION ON CLASS ACTIONS- No class action alleging a violation of the obligations set forth in the regulations established by the Commission under paragraph (6)(A) shall be maintained under this subsection by an individual or any private party in Federal or State court.

(D) PARENS PATRIAE AUTHORITY- In any case in which a State commission has

reason to believe that an act or practice violates the obligations set forth in the regulations established by the Commission under paragraph (6)(A), the State commission may bring a civil action on behalf of the residents within its jurisdiction in a district court of the United States of appropriate jurisdiction, or any other court of competent jurisdiction, to--

(i) enjoin the act or practice;

(ii) obtain--

(I) damages in the sum of actual damages, restitution, or other compensation on behalf of affected residents of the State; and

(II) punitive damages, if the violation is willful or intentional; or

(iii) obtain such other legal and equitable relief as the court may consider to be appropriate.

(E) VENUE; SERVICE OF PROCESS-

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

(ii) SERVICE OR PROCESS- In an action brought under this paragraph, process may be served in any district in which the defendant--

(I) is an inhabitant; or

(II) may be found.

(F) LIMITATION- A State commission that is authorized to enforce the requirements of paragraph (6) may not be authorized to impose additional obligations beyond those established by the Commission in paragraph (6)(A).

(d) Commission to Act if State Commission Will Not Act- If a State commission fails to carry out its enforcement responsibilities under subsection (c)(7), the Commission shall--

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

(2) assume exclusive enforcement authority.

(e) Ability to Manage Public Rights-of-Way-

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

(A) non-discriminatory;

(B) competitively neutral; and

(C) consistent with applicable State law.

(2) CONSTRUCTION PERMITS-

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

(B) RESPONSE WORK OR REPAIR- If there is an emergency necessitating response work or repair in the public right-of-way, a video service provider may begin such work or repair without prior approval from a State or local government, if such provider notifies the State or local government as promptly as possible after beginning such work or repair.

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

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

(f) Conforming Amendments to the Communications Act of 1934-

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

(A) in subsection (a)(1), by striking 'local exchange carrier' and inserting 'telecommunications carrier';

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

(C) in subsection (d)(3), in the first sentence by striking all after 'cable television system' through the period at the end and inserting 'and facilities of other video service providers, regardless of the nature of the services provided.'; and

(D) by adding at the end the following:

'(j) Wireless Service Facility Exemption- Nothing in this section applies to a wireless service facility, including to towers of a provider of mobile services.'

(2) CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS- Section 614(b)(4) of the Communications Act of 1934 (47 U.S.C. 534(b)(4)) is amended to read as follows:

'(4) SIGNAL QUALITY-

'(A) NON-DEGRADATION- The signals of local commercial television stations that a cable operator carries shall be carried without material degradation.

`(B) CARRIAGE STANDARDS- The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of broadcast local commercial television signal when using the same transmission technology.'

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

`(2) BANDWIDTH AND TECHNICAL QUALITY- A cable operator shall--

`(A) provide each qualified local non-commercial television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television stations carried on the cable system when using the same transmission technology; and

`(B) carry the signal of each qualified local non-commercial educated television station without material degradation.'

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

`SEC. 628. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

`(a) Purpose- The purpose of this section is--

`(1) to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market;

`(2) to increase the availability of MVPD programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming; and

`(3) to spur the development of communications technologies.

`(b) Prohibition- It shall be unlawful for an MVPD, an MVPD programming vendor in which an MVPD has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any MVPD from providing MVPD programming or satellite broadcast programming to subscribers or consumers.

`(c) Regulations Required-

`(1) PROCEEDING REQUIRED- Not later than 180 days after the date of enactment of the Broadband Investment and Consumer Choice Act, the Commission shall prescribe regulations to specify particular conduct that is prohibited by subsection (b), in order to

promote--

`(A) the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market; and

`(B) the continuing development of communications technologies.

`(2) MINIMUM CONTENTS OF REGULATION- The regulations required under paragraph (1) shall--

`(A) establish effective safeguards to prevent an MVPD which has an attributable interest in an MVPD programming vendor or a satellite broadcast programming vendor from unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, MVPD programming or satellite broadcast programming to any unaffiliated MVPD;

`(B) prohibit discrimination by an MVPD programming vendor in which an MVPD has an attributable interest or by a satellite broadcast programming vendor in the prices, terms, and conditions of sale or delivery of MVPD programming or satellite broadcast programming among or between cable systems, cable operators, or other MVPDs, or their agents or buying groups, except that an MVPD programming vendor in which an MVPD has an attributable interest or such a satellite broadcast programming vendor shall not be prohibited from--

`(i) imposing reasonable requirements for--

`(I) creditworthiness;

`(II) offering of service; and

`(III) financial stability and standards regarding character and technical quality;

`(ii) establishing different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of MVPD programming or satellite broadcast programming;

`(iii) establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor; or

`(iv) entering into an exclusive contract that is permitted under subparagraph (D);

`(C) prohibit practices, understandings, arrangements, and activities, including exclusive contracts for MVPD programming or satellite broadcast programming between an MVPD and an MVPD programming vendor or satellite broadcast programming vendor, that prevent an MVPD from obtaining such programming from any MVPD programming vendor in which an MVPD has an attributable interest or

any satellite broadcast programming vendor in which an MVPD has an attributable interest for distribution to persons in areas not served by an MVPD as of the date of enactment of the Broadband Investment and Consumer Choice Act; and

`(D) with respect to distribution to persons in areas served by an MVPD, prohibit exclusive contracts for MVPD programming or satellite broadcast programming between an MVPD and an MVPD programming vendor in which an MVPD has an attributable interest or a satellite broadcast programming vendor in which an MVPD has an attributable interest, unless the Commission determines (in accordance with paragraph (4)) that such contract is in the public interest.

`(3) LIMITATIONS-

`(A) GEOGRAPHIC LIMITATIONS- Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

`(B) APPLICABILITY TO SATELLITE RETRANSMISSIONS- Nothing in this section shall apply--

`(i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming; or

`(ii) to any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

`(C) EXCLUSION OF INDIVIDUAL VIDEO PROGRAMS- Nothing in this section shall apply to a specific individual video program produced by an MVPD for local distribution by that MVPD and not made available directly or indirectly to unaffiliated MVPDs, if--

`(i) all other video programming carried on a programming channel or network on which the individual video program is carried, is made available to unaffiliated MVPDs pursuant to paragraph (2)(D); and

`(ii) such specific individual video program is not the transmission of a sporting event.

`(D) MVPD SPORTS PROGRAMMING- The prohibition set forth in paragraph (2) (D), and the rules adopted by the Commission pursuant to that paragraph, shall apply to any MVPD programming that includes the transmission of live sporting events, irrespective of whether an MVPD has an attributable interest in the MVPD programming vendor engaged in the production, creation, or wholesale distribution of such MVPD programming.

`(4) PUBLIC INTEREST DETERMINATIONS ON EXCLUSIVE CONTACTS- In determining whether an exclusive contract is in the public interest for purposes of paragraph (2)(D), the Commission shall consider with respect to the effect of such contract on the

distribution of video programming in areas that are served by an MVPD--

- `(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;
- `(B) the effect of such exclusive contract on competition from multichannel video programming distribution technologies other than cable;
- `(C) the effect of such exclusive contract on the attraction of capital investment in the production and distribution of new MVPD programming;
- `(D) the effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and
- `(E) the duration of the exclusive contract.

`(5) SUNSET PROVISION- The prohibition required by paragraph (2)(D) shall cease to be effective 10 years after the date of enactment of the Broadband Investment and Consumer Choice Act, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

`(d) Adjudicatory Proceeding-

`(1) IN GENERAL- An MVPD aggrieved by conduct that it alleges constitutes a violation of subsection (b), or the regulations of the Commission under subsection (c), may commence an adjudicatory proceeding at the Commission.

`(2) REQUEST FOR PRODUCTION OF AGREEMENTS- In any proceeding initiated under paragraph (1), the Commission shall request from a party, and the party shall produce, such agreements between the party and a third party relating to the distribution of MVPD programming that the Commission believes to be relevant to its decision regarding the matters at issue in such adjudicatory proceeding.

`(3) CONFIDENTIALITY TO BE MAINTAINED- The production of any agreement under paragraph (2) and its use in a Commission decision in the adjudicatory proceeding under paragraph (1) shall be subject to such provisions ensuring confidentiality as the Commission may by regulation determine.

`(e) Remedies for Violations-

`(1) REMEDIES AUTHORIZED- Upon completion of an adjudicatory proceeding under subsection (d), the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to an aggrieved MVPD.

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

`(f) Procedures-

`(1) IN GENERAL- The Commission shall prescribe regulations to implement this section.

`(2) CONTENT OF REGULATIONS- The regulations required under paragraph (1) shall--

`(A) provide for an expedited review of any complaints made pursuant to this section, including the issuance of a final order terminating such review not later than 120 days after the date on which the complaint was filed;

`(B) establish procedures for the Commission to collect such data as the Commission requires to carry out this section, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged to violate this section; and

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

`(g) Reports- The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c), annually report to Congress on the status of competition in the market for the delivery of video programming.

`(h) Exemptions for Prior Contracts-

`(1) IN GENERAL- Nothing in this section shall affect--

`(A) any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into on or before June 1, 1990; or

`(B) any contract that grants exclusive distribution rights to any person with respect to MVPD programming that is not satellite cable programming and that was entered into on or before July 1, 2003, except that the provisions of subsection (c)(2)(C) shall apply for distribution to persons in areas not served by an MVPD.

`(2) LIMITATION ON RENEWALS-

`(A) SATELLITE CABLE PROGRAMMING CONTRACTS- A contract pertaining to satellite cable programming or satellite broadcast programming that was entered into on or before June 1, 1990, but that is renewed or extended after the date of enactment of the Broadband Investment and Consumer Choice Act shall not be exempt under paragraph (1).

`(B) MVPD PROGRAMMING CONTRACTS- A contract pertaining to MVPD programming that is not satellite cable programming that was entered into on or before July 1, 2003, but that is renewed or extended after the date of enactment of the Broadband Investment and Consumer Choice Act shall not be exempt under paragraph (1).

`(i) Definitions- As used in this section:

`(1) MVPD- The term `MVPD' means multichannel video programming distributor.

`(2) MVPD PROGRAMMING- The term `MVPD programming' includes the following:

`(A) DIRECT RECEIPT- Video programming primarily intended for the direct receipt by MVPDs for their retransmission to MVPD subscribers (including any ancillary data transmission).

`(B) ADDITIONAL PROGRAMMING-

`(i) IN GENERAL- Additional types of programming content that the Commission determines in a rulemaking proceeding to be completed not later than 120 days from the date of enactment of the Broadband Investment and Consumer Choice Act, as of the time of such rulemaking, of a type that is--

`(I) primarily intended for the direct receipt by MVPDs for their retransmission to MVPD subscribers, regardless of whether such programming content is--

`(aa) digital or analog;

`(bb) compressed or uncompressed;

`(cc) encrypted or unencrypted; or

`(dd) provided on a serial, pay-per-view, or on demand basis; and

`(II) without regard to the end user device used to access such programming or the mode of delivery of such programming content to MVPDs.

`(ii) CONSIDERATIONS- In making the determination under clause (i), the Commission shall consider the effect of technologies and services that combine different forms of content so that certain content or programming is not included within the meaning of MVPD programming solely because it is integrated with other content that is of a type that is primarily intended for the direct receipt by MVPDs for their retransmission to MVPD subscribers.

`(iii) MODIFICATION OF PROGRAMMING DEFINED AS MVPD PROGRAMMING- At any time after 3 years following the conclusion of the rulemaking proceeding required under clause (ii), any interested MVPD or MVPD programming vendor may petition the Commission to modify the types of additional programming content included by the Commission within the definition of MVPD programming in light of--

`(I) the purpose of this section;

`(II) market conditions at the time of such petition; and

`(III) the factors to be considered by the Commission under clause (ii).

`(3) MVPD PROGRAMMING VENDOR- The term `MVPD programming vendor'--

`(A) means a person engaged in the production, creation, or wholesale distribution for sale of MVPD programming; and

`(B) does not include a satellite broadcast programming vendor.

`(4) SATELLITE BROADCAST PROGRAMMING- The term `satellite broadcast programming' means broadcast video programming when--

`(A) such programming is retransmitted by satellite; and

`(B) the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

`(5) SATELLITE BROADCAST PROGRAMMING VENDOR- The term `satellite broadcast programming vendor' means a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming.

`(6) SATELLITE CABLE PROGRAMMING- The term `satellite cable programming' has the same meaning as in section 705, except that such term does not include satellite broadcast programming.

`(7) SATELLITE CABLE PROGRAMMING VENDOR- The term `satellite cable programming vendor'--

`(A) means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming; and

`(B) does not include a satellite broadcast programming vendor.

`(j) Common Carriers-

`(1) IN GENERAL- Any provision that applies to an MVPD under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers.

`(2) ATTRIBUTABLE INTEREST- Any provision that applies to an MVPD programming vendor in which an MVPD has an attributable interest shall apply to any MVPD programming vendor in which such common carrier has an attributable interest.

`(3) LIMITATION- For the purposes of this subsection, 2 or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in an MVPD programming vendor (or its parent company).'

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

(g) Rulemaking on Section 629- Not later than January 1, 2008, the Commission shall conduct a proceeding to determine the appropriateness of the requirements under subsection (c)(1)(L) taking into account changes and advancements in technology.

SEC. 14. COPYRIGHT LIMITATIONS ON EXCLUSIVE RIGHTS VIDEO SERVICE PROVIDERS.

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

SEC. 15. MUNICIPALLY OWNED NETWORKS.

(a) Protection Against Undue Government Competition With Private Sector- Any State or local government seeking to provide communications service shall--

(1) provide conspicuous notice of the proposed scope of the communications service to be provided, including--

- (A) cost;
- (B) services to be provided;
- (C) coverage area;
- (D) terms; and
- (E) architecture; and

(2) give a detailed accounting of all proposed accommodations that such government owned communications service would enjoy, including--

- (A) any free or below cost rights-of-way;
- (B) any beneficial or preferential tax treatment;
- (C) bonds, grants, or other source of funding unavailable to non-governmental entities; and
- (D) land, space in buildings, or other considerations.

(b) Open Bids Must Be Made Available for Non-Governmental Entities- Not later than 90 days after posting of the notice required under subsection (a)(1), a non-governmental entity shall have the option of participating in an open bidding process conducted by a neutral third party to provide such communications service on the same terms, conditions, financing, rights-of- way, land, space, and accommodations as secured by the State or local government.

(c) Preference for Non-Governmental Entities- In the event of identical bids under subsection (b), the neutral third party conducting the bidding process shall give preference to a non-governmental

entity.

(d) Open Access to Non-Governmental Entities- If a State or local government wins the bid under subsection (b), a non-governmental entity shall have the ability to place facilities in the same conduit, trenches, and locations as the State or local government for concurrent or future use under the same conditions secured by the State or local government.

(e) Grandfather Clause- A State or local government providing communications service as of the date of enactment of this Act shall be exempt from this section, unless such State or local government--

(1) substantially enters into new lines of business; or

(2) substantially expands its communications service beyond its current service area, as such service area existed upon the date of enactment of this Act.

END