

Broadband Investment and Consumer Choice Act

The Broadband Investment and Consumer Choice Act of 2005 aims to encourage widespread investment, innovation and competition across today's diverse communications landscape... to restore America's status as the #1 global information leader... and to deliver to consumers an array of leading-edge communications choices and services.

Its enactment will speed the deployment of advanced communications services to American consumers, encourage investment in advanced communications infrastructure, and assure the continued availability of widely affordable and high quality voice, video, and data services to all Americans.

Updating our communications laws will usher in a new era for consumers with new telecommuting options, new economic opportunities for American businesses and workers, new frontiers in medicine and education... and extraordinary market power for consumers.

I. General Principle

A. General Rule – Conduct, services or service providers that were subject to Title I (General Provisions), Title II (Common Carrier) or Title VI (Cable Communications) of the Communications Act and any equivalent state or local law shall no longer be subject to those laws except to the extent provided in Broadband Investment and Consumer Choice Act.

B. Exceptions to the General Rule – The following provisions of the Communications Act are retained and applicable to services and service providers subject to this Act

- i. enforcement, procedural and administrative provisions,
- ii. Communications Assistance for Law Enforcement Act (CALEA),
- iii. prohibitions on obscene internet material,
- iv. pole attachment requirements
- v. automatic dialing (telephone solicitation)
- vi. access for the disabled, including the hearing and speech impaired

The Broadband Investment and Consumer Choice Act does not affect the FCC's current universal service programs for low income persons to help them with discounts on basic monthly telephone bills (Lifeline) and installation costs (Linkup).

C. Basic Telephone Service – All incumbent local exchange carriers (ILEC) will continue to offer basic telephone service (BTS) at capped rates and terms to business and residential customers. BTS is a single line, flat rate voice communications service within a traditional local calling area with access to 911, touch tone dialing, and with access to long distance, and does not include any inter-exchange (long distance) communications service. Quality standards for BTS shall be established by the FCC and enforced by the states. Eligible telecommunications carriers (ETC) must offer BTS in order to receive federal universal service support, but the capped rate requirement applies only to incumbent local exchange carriers.

The FCC shall establish, and states enforce quality standards for basic telephone service relating to—

(1) reasonable uptime;

- (2) installation intervals;
- (3) repair intervals; and
- (4) suitable voice quality.

D. Rural and 2% Carriers – May elect to continue to be subject to state and federal common carrier laws and regulations. Electing to be so regulated will not affect eligibility for the rural exemption.

II. Carrier of Last Resort Obligations

Compliance with this Act satisfies all state and local carrier of last resort obligations.

III. Consumer Access to Content

A consumer may **not** be denied access to any legal content provided over the facilities used to provide a broadband communications service. E.g. VoIP blocking is prohibited.

IV. Municipally Owned Networks

A state or local government seeking to provide a communications service must give notice of and permit non-government entities to bid to provide such service – preference is to be given to non-government entities. Existing government owned network offerings are grandfathered.

V. Consumer Safeguards

The FCC shall develop and states shall enforce rules regarding slamming, cramming, E911, harassing calls, access for the disabled and obscene telephone calls, billing disputes, and use, sale and distribution of consumer proprietary network information.

VI. Network Interconnection and Access Requirements

Facilities based providers of communications services shall establish commercial arrangements for interconnection purposes. The FCC shall develop and have exclusive jurisdiction of a default regulatory framework governing interconnection between facilities based providers and narrowband communications providers. Such framework shall sunset 5 years after enactment.

VII. Copper Loops, Resale and Number Portability

A. Copper Loops – ILECs must provide until 1/1/2011, unbundled access to the local copper loop and any associated collocation required for such access. Copper loops are an entirely copper cable transmission facility used to provide circuit switched services.

B. Resale – ILECs are obligated until 1/1/2011 to make their narrowband communications services subject to regulation under this Act (e.g. Basic telephone service) available for resale at rates established by the FCC.

C. Number Portability – All communications service providers that use numbers shall provide number portability to customers under FCC established rules.

D. Video Services

- a. **General Rule** – No video service provide shall be required to obtain a state or local franchise, build out its video distribution system in any particular manner, or provide leased access to its video facilities.
- b. **Reasonable Fee** – If a video service provider uses an existing right of way to provide its video service, the provider may be required to pay a reasonable fee of up to 5% of gross video revenues to the state or local government, but not both, in accordance with state law. Local governments will also be able to continue to manage their rights-of-way.
- c. **Cable Act Provisions** – The following Cable Act provisions shall remain in effect and apply to all video service providers:
 - i. retransmission consent,
 - ii. PEG requirements,
 - iii. must carry
 - iv. obscenity and penalties for carrying obscene programming,
 - v. non-regulation of cable content,
 - vi. emergency information,
 - vii. regulation of set top boxes,
 - viii. access to content,
 - ix. customer privacy,
 - x. theft of service,
 - xi. equal employment opportunity,
 - xii. civil and criminal liability,
- d. **Existing Cable Franchises** – Shall cease to exist on date enactment.
- e. **Video Consumer Protection and Customer Safeguards** – The FCC shall establish customer service and consumer protection requirements exclusively enforceable by states.
- f. **Program Access**—All video content that is controlled by a vertically integrated multi-channel video distributor (MPVD) must be made available to other MVPDs on fair and equal terms. Sports programming is treated as a special case where exclusive contracts are prohibited. These programming provisions will sunset in 10 years.
- g. **Copyright** -- The compulsory license provisions of the copyright Act shall apply to all video service providers.