

Calendar No. 707110TH CONGRESS
2D SESSION**S. 1853****[Report No. 110-330]**

To promote competition, to preserve the ability of local governments to provide broadband capability and services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2007

Mr. LAUTENBERG (for himself, Mr. SMITH, Mr. KERRY, Mr. MCCAIN, Mrs. McCASKILL, Ms. SNOWE, Mr. STEVENS, Mr. INOUE, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

APRIL 22, 2008

Reported by Mr. INOUE, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To promote competition, to preserve the ability of local governments to provide broadband capability and services, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Community Broadband
3 Act of 2007”.

4 **SEC. 2. LOCAL GOVERNMENT PROVISION OF ADVANCED**
5 **TELECOMMUNICATIONS CAPABILITY AND**
6 **SERVICES.**

7 No State or local government statute, regulation, or
8 other State or local government legal requirement may
9 prohibit, or have the effect of prohibiting, any public pro-
10 vider from providing advanced telecommunications capa-
11 bility, or services using advanced telecommunications ca-
12 pability, to any person or any public or private entity.

13 **SEC. 3. SAFEGUARDS.**

14 (a) ADMINISTRATION.—To the extent any public pro-
15 vider regulates competing providers of advanced tele-
16 communications capability or services, such public pro-
17 vider shall apply its ordinances and rules and policies, in-
18 cluding those relating to the use of public rights-of-way,
19 permitting, performance bonding, and reporting, without
20 discrimination in favor of itself or any other provider of
21 advanced telecommunications capability or service that
22 such provider owns or with which such provider is affili-
23 ated.

24 (b) APPLICATION OF GENERAL LAWS.—Nothing in
25 this Act exempts a public provider that offers advanced
26 telecommunications capability or services to the public

1 from any Federal communications law or regulation that
 2 applies to all providers of advanced telecommunications
 3 capability or services to the public.

4 **SEC. 4. PUBLIC-PRIVATE PARTNERSHIPS ENCOURAGED.**

5 Each public provider that intends to provide ad-
 6 vanced telecommunications capability or services to the
 7 public is encouraged to consider the potential benefits of
 8 a public-private partnership prior to providing such capa-
 9 bility or services.

10 **SEC. 5. PUBLIC INPUT.**

11 **SEC. 5. PUBLIC INPUT AND PRIVATE SECTOR OPPORTUNITY**

12 **TO BID.**

13 (a) NOTICE AND OPPORTUNITY TO BE HEARD.—Be-
 14 fore a public provider may provide advanced telecommuni-
 15 cations capability or services to the public, either directly
 16 or through a public-private partnership, such public pro-
 17 vider shall—

18 (1) publish notice of its intention to do so;

19 (2) generally describe the capability or services
 20 to be provided and the proposed coverage area for
 21 such capability or services;

22 (3) identify any special capabilities or services
 23 to be provided in low-income areas or other demo-
 24 graphically or geographically defined areas; ~~and~~

1 (4) provide local citizens and private-sector en-
 2 tities with an opportunity to be heard on the costs
 3 and benefits of the project and potential alternatives
 4 to the ~~project~~ *project, including any bids under*
 5 *paragraph (5); and*

6 (5) *provide private-sector entities with an oppor-*
 7 *tunity to bid to provide such capability or services*
 8 *during the 30-day period following publication of the*
 9 *notice provided for in paragraph (1).*

10 (b) APPLICATION TO EXISTING PROJECTS AND
 11 PENDING PROPOSALS.—Subsection (a) shall not apply
 12 to—

13 (1) any contract or other arrangement under
 14 which a public provider is providing advanced tele-
 15 communications capability or services to the public
 16 as of the date of enactment of this Act; and

17 (2) any public provider proposal to provide ad-
 18 vanced telecommunications capability or services to
 19 the public that, as of the date of enactment of this
 20 Act—

21 (A) is in the request-for-proposals process;

22 (B) is in the process of being built; or

23 (C) has been approved by referendum.

1 **SEC. 6. EXEMPTIONS.**

2 The requirements of sections 3 and 5 shall not
3 apply—

4 (1) when a public provider provides advanced
5 telecommunications capabilities or services other
6 than to the public or to such classes of users as to
7 be effectively available to the public; or

8 (2) during an emergency declared by the Presi-
9 dent, the Governor of the State in which the public
10 provider is located, or any other elected local official
11 authorized by law to declare a state of emergency in
12 the jurisdiction in which the public provider is lo-
13 cated.

14 **SEC. 7. USE OF FEDERAL FUNDS.**

15 *If any project providing advanced telecommunications*
16 *capability, or services using advanced telecommunications*
17 *capability, under this Act fails due to bankruptcy or is ter-*
18 *minated by a public provider, no Federal funds may be pro-*
19 *vided to such public provider specifically to assist such pub-*
20 *lic provider in reviving or renewing that project, unless*
21 *such failure due to bankruptcy occurred in any jurisdiction*
22 *that is subject to a declaration by the President of a major*
23 *disaster, as defined under section 102 of the Robert T. Staf-*
24 *ford Disaster Relief and Emergency Assistance Act (42*
25 *U.S.C. 5122).*

1 **SEC. 7. DEFINITIONS.**

2 **SEC. 8. DEFINITIONS.**

3 In this Act:

4 (1) **ADVANCED TELECOMMUNICATIONS CAPA-**
5 **BILITY.**—The term “advanced telecommunications
6 capability” has the meaning given that term by sec-
7 tion 706(e)(1) of the Telecommunications Act of
8 1996 (47 U.S.C. 157 note).

9 (2) **PUBLIC PROVIDER.**—The term “public pro-
10 vider” means a State or political subdivision thereof,
11 any agency, authority, or instrumentality of a State
12 or political subdivision thereof, or an Indian tribe
13 (as defined in section 4(e) of the Indian Self-Deter-
14 mination and Education Assistance Act (25 U.S.C.
15 450b(e)), or any entity that is owned, controlled, or
16 otherwise affiliated with a State, political subdivision
17 thereof, agency, authority, or instrumentality, or In-
18 dian tribe.

Calendar No. 707

110TH CONGRESS
2^D SESSION

S. 1853

[Report No. 110-330]

A BILL

To promote competition, to preserve the ability of local governments to provide broadband capability and services, and for other purposes.

APRIL 22, 2008

Reported with amendments