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109TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 109–470

COMMUNICATIONS OPPORTUNITY, PROMOTION, AND ENHANCEMENT ACT OF 2006

MAY 17, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5252]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5252) to promote the deployment of broadband networks and services, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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49–006

PURPOSE AND SUMMARY

The purpose of the Communications Opportunity, Promotion, and Enhancement Act of 2006 is to promote the deployment of broadband networks and services. The bill does so by: (1) creating a streamlined, pro-competitive national process under which companies can enter the cable service market with new, advanced networks capable of providing broadband video, voice, and data services; (2) authorizing the Federal Communications Commission (FCC or the Commission) to enforce its Broadband Policy Statement and the principles incorporated therein on a case-by-case basis so that consumers continue to have access to lawful content, applications, and services of their choosing that are available over the public Internet; (3) facilitating and requiring the provision of 911 and enhanced 911 (E911) services to consumers by Voice Over Internet Protocol (VOIP) providers; (4) ensuring that municipalities have the option to provide telecommunications, information, and cable services to their communities; (5) ensuring consumers have the option to purchase broadband services on a stand-alone basis; and (6) facilitating the development of multi-function, multi-platform wireless devices capable of offering a range of converging broadband services.

BACKGROUND AND NEED FOR LEGISLATION

Currently, a cable operator generally must obtain a local franchise from a local franchising authority (LFA) before it can offer cable service in a local community. See 47 U.S.C. § 541(b)(1). There are thousands of such LFAs, and each one can impose disparate restrictions on a cable operator. When localities first began franchising cable operators, there was typically only one cable operator in each local community. In fact, some communities granted exclusive cable franchises. Moreover, no companies were yet providing other types of multichannel video programming distribution (MVPD) services such as direct broadcast satellite (DBS) service. In that context, it made sense for municipalities to impose rate and service regulations on their lone cable operators.

Since then, however, DBS service has developed. Two companies, Echostar and DirecTV, now offer DBS service nationally, offering multichannel video service in competition with each other and with cable companies. According to a recent FCC report, DBS providers have captured almost 28 percent of the MVPD market. See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 05–255, Twelfth Annual Report, 21 FCC Rcd 2503, ¶ 72 (2006) (Video Competition Report). Moreover, Congress now prohibits LFAs from granting exclusive cable franchises, see 47 U.S.C. § 541(a)(1), which enables cable "overbuilders" to enter each local market in competition with the incumbent cable providers. In 1996, Congress also lifted a statutory prohibition against the provision by local telephone companies of video programming directly to subscribers within the phone companies' telephone service areas, and created "open video system" (OVS) provisions to facilitate phone companies' entry into the video business. See Telecommunications Act of 1996, P.L. 104–104, 110 Stat. 124 (repealing 47 U.S.C. § 533(b) and creating 47 U.S.C. §§ 571, 573.)

Against this backdrop, there is less need for local regulation of cable services, which was predicated in part on the presence of only a single provider. Unfortunately, there is evidence that cumbersome local regulations are hindering competition. Indeed, according to the FCC, overbuilders have only 1.5 percent of the MVPD market. See Video Competition Report, at ¶ 14. In a proceeding the FCC launched in November 2005 to examine the barriers to competitive entry that the local cable franchising regime creates, non-incumbent cable operators listed local regulations as one of the reasons they have been unable to penetrate the market. See In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05–311, Notice of Proposed Rulemaking, 20 FCC Rcd 18581 (2005). In particular, they have pointed to "buildout" requirements, which force them to serve entire communities regardless of the economic or business case for such deployment. According to these providers, such requirements are a large reason why they have difficulty attracting investment capital and why they are reluctant to enter new markets. Similarly, Congress' attempts to facilitate phone company entry into the video business through the OVS provisions have been frustrated by local regulation. Despite Congress' goal of creating a streamlined, national process for OVS entry, a court challenge brought by the municipalities resulted in the application of local franchising requirements to OVS providers. See *City of Dallas* v. *FCC*, 165 F.3d 341 (5th Cir. 1999).

A number of entities, including telephone companies, are once again seeking to offer competitive cable services. The requirement to negotiate thousands of agreements with LFAs, and the obligations the LFAs impose, are delaying such entry, however, as well as the consumer benefits that such entry would provide.

Cable service is interstate in nature, as the United States Supreme Court recognized as far back as 1968 in its Southwestern Cable decision, 392 U.S. 157 (1968). A significant amount of video programming carried on cable systems is produced by national networks and distributed across state lines to a national audience. The same facilities that carry cable services are also carrying increasing amounts of Internet-protocol-based broadband video, voice, and data services that cross state, as well as national, borders. A patchwork of disparate municipal regulations can hinder the deployment of advanced broadband networks that will bring increasingly advanced and competitive services to consumers. Such a patchwork can delay the rollout of cable services as cable operators have to maneuver through thousands of local negotiations and sets of rules.

This bill seeks to address this concern and strike the right balance between national standards and local oversight. Thus, the bill creates an alternative, national cable franchise process that companies may opt into in lieu of the local franchising process.

Recognizing the role of localities, however, the bill: (1) preserves municipalities' existing authority to collect a franchise fee of up to 5 percent of gross revenues from cable service; (2) preserves the municipalities' authority to manage their local rights-of-way, so long as such management is reasonable, competitively neutral, and nondiscriminatory; (3) continues to require carriage of public, educational, and governmental (PEG) channels, and allows municipali-

ties to require holders of a national franchise to increase the number of PEG channels over time; (4) preserves institutional networks (iNets) used for governmental and other public safety purposes; (5) allows municipalities to collect, in addition to the 5 percent franchise fee, another one percent of gross revenues from cable services to support PEG channels and institutional networks; (6) requires the FCC to establish national consumer protection and customer service standards that the municipalities may enforce; and (7) creates a strong antidiscrimination provision that prohibits holders of a national franchise from discriminating in the provision of cable service to a group of consumers based on the income of that group.

By creating an alternative, streamlined national franchise process with a market-based approach, while recognizing the appropriate role of localities, the bill will reduce barriers to video entry by both large and small providers. The result will be increased competition, lower prices, enhanced service quality, and the deployment of new and innovative broadband video, voice, and data services over advanced, facilities-based networks. The deployment of new, advanced networks will stimulate the economy and increase employment in the United States, and the increased competition will provide consumers with more disposable income.

Title II of the COPE Act provides the FCC with explicit authority to enforce its Broadband Policy Statement, adopted by the FCC on August 5, 2005. See In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, and other Matters, CC Docket No. 02–33, Policy Statement, 20 FCC Rcd 14986 (2005) (Broadband Policy Statement or policy statement). The Broadband Policy Statement was adopted on the same day that the FCC conformed its classification of broadband Internet access services offered by wireline facilities-based providers consistent with the U.S. Supreme Court's decision in the Brand X case. See *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services,* 125 S. Ct. 2688 (2005) (Brand X). In Brand X, the Supreme Court held that the FCC's conclusion that cable-modem service is an information service under the Communications Act rather than a telecommunications service is a lawful construction of the Act.

By classifying both high-speed cable-modem services and broadband Internet access services offered by wireline facilities-based providers as information services, the Commission clarified that such services are beyond the scope of the common carriage regulations of Title II of the Communications Act, which requires carriers to have charges, practices, classifications, and regulations that are "just and reasonable." 47 U.S.C. § 201(b). Common carriers are also prohibited from making "any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or service" or from providing "any undue or unreasonable preference or advantage or any particular person." 47 U.S.C. § 202(a).

In determining the appropriate regulatory framework for cable modem service, the Commission determined that:

> we believe "broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market." In this regard, we seek to remove regulatory uncertainty that in itself may discourage investment and innovation. And we consider how best to limit unnecessary and unduly burdensome regulatory costs.

In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, GN Docket No. 00–185, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 5 (2002). It is critical that broadband services "exist in a minimal regulatory environment that promotes investment and innovation in a competitive market." Id It is also critical that broadband providers not be subject to common carriage and non-discrimination regulations such as those incorporated in Title II of the Communications Act.

Concepts such as "just and reasonable" charges and practices and non-discriminatory treatment may be necessary where competition does not exist. But where competition does exist, such as the broadband service market, principles such as common carriage and non-discrimination are not appropriate because the competitive market will ensure that providers of such service will act in the best interest of consumers. In addition, prescriptive, anticipatory FCC rules imposing common carriage and non-discrimination requirements on a nascent market such as Internet access would chill investment and innovation in this sector and deprive consumers of the benefits of innovation in the network management necessary to transmit voice, video, and data over broadband networks.

The broadband market is competitive, and competition and consumer choice are only going to increase as long as new technologies can develop in a minimal regulatory environment that does not involve common carriage or non-discrimination requirements. Both the FCC and the courts have found the broadband market to be competitive. See *United States Telecom Ass'n* v. *FCC,* 359 F.3d 554, 585 (D.C. Cir. 2004) (upholding Commission's decision not to require the unbundling of hybrid loops, fiber-to-the home facilities, and line sharing because of "the persistence of substantial competition in broadband"); *United States Telecom Ass'n* v. *FCC,* 290 F.3d 415, 428 (D.C. Cir. 2002) (noting Commission findings of "robust competition * * * in the broadband market"); See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 05–255, Twelfth Annual Report, 21 FCC Rcd 2503, ¶ 237 (2006) (noting that "[t]he advent of IPTV is a response by both incumbent operators and new entrants to the growth of competition in the provision of broadband services"). Today, cable operators and telephone companies compete head-to-head in many markets for broadband subscribers. As of June of 2005, 76% of households served by incumbent telephone companies had broadband connectivity available. 91% of households served by cable-television services had broadband connectivity.

According to the FCC, 74.6% of zip codes had three or more broadband providers. 88.7% of zip codes had two or more broadband providers. While the FCC's zip code-based data may not be an exact demonstration that every household within that zip code has broadband connectivity, such data is representative of the fact that broadband service, as well as broadband competition, is increasingly available throughout the United States. Even where there are only two providers, broadband prices have been decreasing and broadband speeds have been increasing. Competition in the broadband market is confirmed by the fact that providers are in-

creasing capacity and lowering prices. For example, AT&T recently announced that it would offer broadband service at a download speed of up to 6 megabits per second for as low as $27.99 per month during the first year and $39.99 after that. Such a service is 100 times faster than the 56 kilobit-per-second speed of dial-up Internet service, which retailed until recently at approximately $25 per month.

In addition, dozens of municipalities are providing, building, or considering contracts to provide broadband services through wireless and fiber networks. Cities that are constructing or evaluating contracts to construct municipal broadband networks include Los Angeles, Chicago, Houston, Philadelphia, San Francisco, and Seattle. Suffolk County, New York is planning to provide free wireless access to the Internet to its 1.5 million residents. The COPE Act will speed the development of municipal broadband networks by prohibiting state laws that ban such networks. This will increase the competitive pressures on existing broadband providers to manage their networks in a manner that continues consumers' unfettered access to lawful content, applications, and services available over the public Internet.

Commercial mobile service providers are also ramping up the speeds of their broadband networks, especially Sprint/Nextel, which plans to offer speeds of 2–3 megabits per second for its wireless broadband service by 2008. In addition, the auction of 90 MHz of spectrum this year as a result of the Commercial Spectrum Enhancement Act of 2004 and of 60 MHz of spectrum from the 700 MHz television band in 2008 will greatly increase the number of wireless broadband providers. The 700 MHz band is ideally suited for broadband wireless applications.

Faced with this competitive market, the Committee does not expect broadband providers to manage their networks in a manner detrimental to consumers. There is no reason to believe that consumers will be deprived of unfettered access to lawful Internet content, applications, and service, or be unable to attach devices of their choosing to their Internet connections in order to access such content, applications and services. The Committee is only aware of one instance in which a broadband provider, Madison River Communications, has acted in a manner harmful to consumers by blocking the communications ports of Vonage, a provider of VOIP services.

The Commission and Madison River entered into a consent decree that terminated the blocking of Vonage's ports, which was premised upon the FCC's authority under section 201(b). See In re Madison River Communications, LLC, File No. EB–05–IH–0110, Order, 20 FCC Rcd 4295 (Chief, Enf. Bur. 2005). While the FCC, in the wake of the Brand X case, classified wireline Internet access services as information services not subject to Section 201(b) of the Communications Act, Title II of the COPE Act will now give the FCC explicit authority to ensure that the FCC can remedy situations in which conduct such as port blocking occurs.

HEARINGS

During the first session of the 109th Congress, the Subcommittee on Telecommunications and the Internet held four oversight hear-

ings on how Internet protocol-enabled services are changing the face of communications.

The Subcommittee held the first of those oversight hearings on February 9, 2005. The hearing was entitled, "How Internet Protocol-Enabled Services are Changing the Face of Communications: A View from Technology Companies." The Subcommittee received testimony from: Mr. Ed J. Zander, Chairman and Chief Executive Officer, Motorola, Inc.; Mr. Andy Mattes, President and Chief Executive Officer, Siemens Communications, Inc.; Dr. Michael Quigley, Chief Executive Officer, Alcatel, USA; Dr. Irwin Mark Jacobs, Chairman and Chief Executive Officer, Qualcomm, Inc.; and Ms. Patricia Russo, Chairman and Chief Executive Officer, Lucent, Inc.

The Subcommittee held the second hearing on March 16, 2005. The hearing was entitled, "How Internet Protocol-Enabled Services are Changing the Face of Communications: A Look at the Voice Marketplace." The Subcommittee received testimony from: Mr. Paul Erickson, Chairman, SunRocket; Mr. Carl Grivner, Chief Executive Officer, XO Communications; Mr. John Melcher, Executive Director, Greater Harris County 911 Emergency Network; Ms. Karen Puckett, President and Chief Operating Officer, CenturyTel, Inc.; Mr. Thomas M. Rutledge, Chief Operating Officer, Cablevision Systems Corporation; and Mr. Mark Shlanta, Chief Executive Officer, South Dakota Network Communications.

The Subcommittee held the third hearing on April 20, 2005. The hearing was entitled, "How Internet Protocol-Enabled Services are Changing the Face of Communications: A Look at Video and Data Services." The Subcommittee received testimony from: Ms. Lea Ann Champion, Senior Executive Vice President, IP Operations and Services, SBC Services, Inc.; Mr. David L. Cohen, Executive Vice President, Comcast Corporation; Mr. Greg Schmidt, Vice President of New Development and General Counsel, LIN Television Corporation; Mr. Paul Mitchell, Senior Director and General Manager, Microsoft TV Division, Microsoft Corporation; Mr. Robert E. Ingalls, Jr., President, Retail Markets Group, Verizon Communications; Mr. James M. Gleason, President, New Wave Communications; and Mr. Jack Perry, President and Chief Executive Officer, Decisionmark Corp.

The Subcommittee held the fourth hearing on April 27, 2005. The hearing was entitled, "How Internet Protocol-Enabled Services Are Changing the Face of Communications: A View from Government Officials." The Subcommittee received testimony from: The Honorable Lewis K. Billings, Mayor, Provo City, Utah; The Honorable Kenneth Fellman, Mayor, Arvada, Colorado, on behalf of the National Association of Telecommunications Officers and Advisors; Ms. Diane Munns, Commissioner, Iowa State Utilities Board, on behalf of the National Association of Regulatory Utility Commissioners; Mr. Charles M. Davidson, Commissioner, Florida Public Service Commission; Mr. John Perkins, Iowa Consumer Advocate, President, National Association of State Utility Consumer Advocates; Mr. David C. Quam, Director, Federal Relations, National Governors Association; and Ms. Karen P. Strauss, KPS Consulting, on behalf of the Alliance for Public Technology.

During the first session, the Subcommittee also held one legislative hearing on November 9, 2005, on a staff discussion draft of legislation to create a statutory framework for Internet protocol and

broadband services. The Subcommittee received testimony from: Mr. James D. Ellis, Senior Executive Vice President and General Counsel, SBC Communications; Mr. Tim Krause, Chief Marketing Officer and Senior Vice President Government Relations, Alcatel North America; Mr. Paul Mitchell, Senior Director and General Manager, Microsoft TV Division, Microsoft Corporation; The Honorable Marilyn Praisner, Member, Montgomery County Council, Montgomery County, Maryland, on behalf of the National Association of Telecommunications Officers and Advisors; Mr. Christopher Putala, Executive Vice President, Public Policy, EarthLink, Inc.; Mr. Wayne M. Rehberger, Chief Operating Officer, XO Communications, Inc.; Mr. Edward A. Salas, Staff Vice President, Network Planning, Verizon Wireless; Mr. Michael S. Willner, President and Chief Executive Officer, Insight Communications; Mr. K. James Yager, Chief Executive Officer, Barrington Broadcasting Company, LLC, on behalf of the National Association of Broadcasters; Dr. Frank G. Bowe, Ph.D., LL.D., Professor, School of Education and Allied Human Services, Hofstra University; Mr. Tony Clark, President, North Dakota Public Service Commission, on behalf of the National Association of Regulatory Utility Commissioners; Mr. Harry "Hap" Haasch, Executive Director, Community Access Center, on behalf of the Alliance for Community Media; Mr. Gene Kimmelman, Senior Director of Public Policy, Consumers Union; Mr. Delbert Wilson, General Manager, Industry Telephone Company; and Mr. Joel Wiginton, Vice President and Senior Counsel, Sony Electronics.

During the second session of the 109th Congress, the Subcommittee held one legislative hearing on March 30, 2006, on a Committee Print entitled, "The Communications Opportunity, Promotion, and Enhancement Act of 2006." The Subcommittee received testimony from: The Honorable Kenneth Fellman, Esq., Mayor, Arvada, Colorado, on behalf of the National Association of Telecommunications Officers and Advisors, the National League of Cities, the National Conference of Mayors, and the National Association of Counties; Mr. Walter McCormick, President and Chief Executive Officer, United States Telecom Association; Mr. Kyle E. McSlarrow, President and Chief Executive Officer, National Cable & Telecommunications Association; Mr. Timothy J. Regan, Senior Vice President, Global Government Affairs, Corning Incorporated; Mr. Paul Misener, Vice President, Global Public Policy, Amazon.com; Mr. David J. Keefe, Chief Executive Officer, Atlantic Broadband, on behalf of the American Cable Association; Mr. Jerry Fritz, Senior Vice President and General Counsel, Allbritton Communications, on behalf of the National Association of Broadcasters; Mr. Jeffrey Citron, Chairman and Chief Strategist, Vonage; Ms. Julia Johnson, Chairman, Video Access Alliance; Mr. Anthony Thomas Riddle, Executive Director, Alliance for Community Media; Ms. Lillian Rodríguez-López, President, Hispanic Federation; Ms. Jeannine Kenney, Senior Policy Analyst, Consumers Union; Mr. Randolph J. May, Senior Fellow and Director of Communications Policy Studies, the Progress & Freedom Foundation; and Mr. James Makawa, Co-Founder and Chief Executive Officer, The Africa Channel.

COMMITTEE CONSIDERATION

On Tuesday, April 4, 2006, and Wednesday, April 5, 2006, the Subcommittee on Telecommunications and the Internet met in open markup session and approved the Committee Print entitled the Communications Opportunity, Promotion, and Enhancement Act of 2006 for Full Committee consideration, amended, by a record vote of 27 yeas and 4 nays, a quorum being present.

On Tuesday, April 25, 2006, and Wednesday, April 26, 2006, the Full Committee met in open markup session and ordered a Committee Print entitled the Communications Opportunity, Promotion, and Enhancement Act of 2006 favorably reported to the House, amended, by a record vote of 42 yeas and 12 nays, a quorum being present. A request by Mr. Barton to allow a report to be filed on a bill to be introduced by Mr. Barton, and that the actions of the Committee be deemed as actions on that bill, was agreed to by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on amendments offered to the measure, including the names of those Members voting for and against. A motion by Mr. Barton to order the Committee Print reported to the House, amended, was agreed to by a record vote of 42 yeas and 12 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 106

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Ms. Solis, No. 2, to create phased-in buildout requirements for holders of national franchises.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer				Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee		X	
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 107

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Mr. Waxman, No. 4, to prohibit a holder of a national franchise from denying or offering inferior access to its cable service to potential residential subscribers in a manner that has the purpose or effect of discriminating against that group based on income.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella				Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen			
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 108

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Ms. Solis, No. 5, to prohibit a holder of a national franchise from denying access to its cable service to a group of potential residential subscribers based on race, color, religion, national origin, or sex, as well as income.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 23 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis				Mr. Markey			
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson				Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 109

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Mr. Dingell, No. 6, to (1) require a holder of a national franchise to certify that it will comply with all applicable municipal rights-of-way requirements; (2) clarify that nothing in the Communications Act of 1934 shall be construed to restrict the authority of a municipality to enforce, or to give the FCC authority over disputes arising from, municipal rights-of-way requirements; (3) clarify that the definition of gross revenues shall include revenues features, functions and capabilities directly related to video programming; (4) create a dispute resolution process for disputes over franchise fees and fees to support PEG channels and institutional networks; and (5) require the FCC to consult with franchising authorities in the promulgation of rules to implement the Communications Opportunity, Promotion, and Enhancement Act of 2006.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 23 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson				Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/26/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 110

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Mr. Doyle, No. 7, to (1) give the FCC authority to enforce compliance with the requirements of a national franchise other than those governing municipal rights-of-way, and to give local franchising authorities authority to enforce all requirements of a national franchise in their franchise areas; (2) authorize local franchising authorities to initiate an enforcement proceeding or report a violation to the FCC; (3) create an FCC and franchising authority complaint process; (4) allow the FCC and franchising authorities to issue refunds to address violations; (5) require the FCC to create, in consultation with franchising authorities, guidelines for forfeitures and refunds; (6) allow franchising authorities to issue forfeiture and rebate recommendations based on the guidelines and to issue orders requiring compliance with the requirements of a national franchise, but not to create any new standards or regulations or expand on the national standards and regulations of the FCC; (7) allow the FCC and a franchising authority to require the filing of cable operator contracts or data directly related to violations; (8) allow cable operators to file FCC appeals of franchising authority orders; (9) allow franchising authorities to recover from cable operators the reasonable costs of enforcing the requirements of the national franchise; and (10) require the FCC to issue annual reports to the House and Senate regarding complaints, and to request franchising authorities to voluntarily submit information to the FCC regarding complaints filed with the franchising authorities.

DISPOSITION: NOT AGREED TO, by a roll call vote of 23 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson				Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess							
Ms. Blackburn		X					

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 111

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Ms. Baldwin, No. 8, to (1) allow local franchising authorities to initiate, on request of an individual, a proceeding to enforce the antidiscrimination provisions of the Communications Opportunity, Promotion, and Enhancement Act of 2006; (2) allow appeal to the FCC of local franchising authority decisions in such proceedings; (3) allow franchising authorities to enforce their decisions in such proceedings if they have not been appealed to the FCC; (4) allow a franchising authority and the FCC to require a cable operator to disclose information and documents in such a proceeding or appeal; and (5) require holders of a national franchise to file a biannual report with the FCC and franchising area.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell			
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson				Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering		X		Mr. Green			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich				Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/26/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 112

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Ms. Baldwin, No. 16, to require a holder of a national franchise to pay the larger of 1 percent of gross revenues or a proportional amount, based on number of subscribers, of the monetary and in-kind PEG support of the largest cable operator.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 20 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield				Mr. Gordon	X		
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson				Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette			
Mr. Buyer		X		Ms. Capps			
Mr. Radanovich				Mr. Doyle	X		
Mr. Bass				Mr. Allen			
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis			
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson				Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn							

4/26/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 113

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Mr. Markey, No. 17, to impose non-discriminatory requirements on the network management of broadband providers.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns		X	
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering		X		Mr. Green		X	
Mr. Fossella				Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/26/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 114

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

AMENDMENT: An amendment by Mr. Gonzalez, No. 29, to require the FCC to conduct a study on the business practices of the five largest Internet search engines and the five largest electronic commerce websites.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 11 yeas to 43 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman		X	
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher		X	
Mr. Stearns	X			Mr. Towns		X	
Mr. Gillmor	X			Mr. Pallone		X	
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield		X		Mr. Gordon		X	
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo		X	
Mr. Shimkus		X		Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel		X	
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering	X			Mr. Green	X		
Mr. Fossella		X		Mr. Strickland		X	
Mr. Blunt		X		Ms. DeGette		X	
Mr. Buyer		X		Ms. Capps		X	
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass		X		Mr. Allen		X	
Mr. Pitts		X		Mr. Davis		X	
Ms. Bono		X		Ms. Schakowsky		X	
Mr. Walden		X		Ms. Solis		X	
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson				Mr. Inslee		X	
Mr. Rogers				Ms. Baldwin		X	
Mr. Otter				Mr. Ross		X	
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

4/26/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 115

Bill: Committee Print, Communications Opportunity, Promotion, and Enhancement Act of 2006

MOTION: Motion by Mr. Barton to order the Committee Print reported to the House, as amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 42 yeas to 12 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman		X	
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher	X		
Mr. Stearns	X			Mr. Towns	X		
Mr. Gillmor	X			Mr. Pallone	X		
Mr. Deal	X			Mr. Brown	X		
Mr. Whitfield	X			Mr. Gordon	X		
Mr. Norwood	X			Mr. Rush	X		
Ms. Cubin	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg	X			Mr. Wynn	X		
Mr. Pickering	X			Mr. Green	X		
Mr. Fossella	X			Mr. Strickland	X		
Mr. Blunt	X			Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass	X			Mr. Allen		X	
Mr. Pitts	X			Mr. Davis	X		
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez	X		
Mr. Ferguson				Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin		X	
Mr. Otter				Mr. Ross	X		
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

4/26/2006

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held legislative and oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 5252 is to promote the deployment of broadband networks and services.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5252, the Communications Opportunity, Promotion, and Enhancement Act of 2006, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE, CONGRESSIONAL BUDGET OFFICE ESTIMATE, AND FEDERAL MANDATES STATEMENT

The Congressional Budget Office estimate required pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives section 402 of the Congressional Budget Act of 1974, and the estimate of Federal mandates required pursuant to section 423 of the Unfunded Mandates Reform Act were requested from the Congressional Budget Office, but were not prepared as of the date of filing of this report. The Congressional Budget Office estimate and accompanying materials will be contained in a supplemental report.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

Section 1 establishes the short title of the bill as the "Communications Opportunity, Promotion, and Enhancement Act of 2006."

Section 101. National cable franchising

Section 101(a) of the bill amends the Communications Act of 1934 (the Communications Act) by adding new Section 630, which creates a national cable franchising regime.

"Sec. 630. National Cable Franchising."

New Section 630(a) allows an eligible person or group to elect a national franchise in lieu of a local franchise, statewide franchise, or OVS authorization to provide cable service. The bill leaves intact the option for the person or group to operate under such local and statewide franchises or an OVS certification. A person or group with such authority to provide video services may continue to do so, or may elect a national franchise to provide cable service in a franchise area consistent with the provision of new Section 630. If such a person or group elects a national franchise, a local franchising authority may not require the person or group to obtain any other authority in order to provide cable service in that franchise area.

New Section 630(a)(1) allows a person or group to elect a national franchise in lieu of a local franchise, statewide franchise, or OVS certification if it meets the criteria spelled out in new Section 630(d). New Section 630(a)(2) requires a person or group seeking a national franchise to file a certification with the FCC identifying the local franchise areas it plans to serve, and to file subsequent certifications as it adds additional franchise areas. New Section 630(a)(3) provides that the certifications must contain basic contact information about the person or group and its local agent in each franchise area, a declaration that it is eligible for a national franchise, an identification of the franchise areas it is seeking to serve, a declaration that it will send a copy of the certifications to each local franchising authority where it plans to provide cable service, a declaration that it will comply with local rights-of-way requirements in accordance with new Section 630(f), and a declaration that it will abide by national consumer protection and customer service standards that may be enforced by the FCC and the local franchising authority in accordance with new Section 630(g).

New Section (a)(3)(F) requires the person or group filing the certification to identify the franchise areas in which it intends to offer cable service. This will be particularly important for application of the franchise eligibility provisions of new Section 630(d) and the antidiscrimination provisions of new Section 630(h). According to the FCC, 99 percent of U.S. television households are currently passed by the facilities of an existing cable provider. Video Competition Report, at ¶ 30. This means that 99 percent of TV households are already in an existing franchise area as defined by a local franchising authority. To serve one of these households, a national franchisee must identify as one if its franchise areas in its certification one of the existing locally-defined franchise areas that contains the household. If the household falls within more than one existing franchise area, such as where the franchise areas of an incumbent cable operator and an overbuilder overlap, the national franchisee may select any of the existing franchise areas that contains the household.

In the rare case in which a household does not fall within an existing franchise area, to serve that household, the national franchisee must have identified as one of its franchise areas a con-

tiguous geographic area that covers the entirety of a city, county, township, or other unit of general local government where that household is situated. The phrase "unit of general local government" is defined in new Section 630(p). The Committee intends that the national franchisee may select as large or as small a unit of general local government as it wishes so long as it covers the entire geographic area within that unit of general local government, and so long as that geographic area is within the jurisdiction of only one local franchising authority. If part of the contiguous geographic area falls within an existing franchise area, however, the national franchisee must exclude from its designation of the franchise area the area already within the existing franchise area. Also, if the contiguous geographic area is within the jurisdiction of different franchising authorities, the national franchise holder must specify each area as a separate franchise area.

The prospective franchise holder may identify as many franchise areas as it wishes in a single certification, and may add additional franchise areas in subsequent certifications.

New Section 630(a)(4) requires the person or group to send a copy of its certification to each local franchising authority where it plans to provide cable service under a national franchise. New Section 630(a)(4) also preserves the option of a person or group to negotiate a local or statewide franchise, or operate under the OVS provisions, consistent with current law.

New Section 630(a)(5) requires holders of a national franchise to keep their certifications up-to-date and accurate. New Section 630(a)(6) requires the FCC to keep copies of all current certifications publicly available in electronic form, such as on its web site.

New Section 630(b) governs the effectiveness and duration of a national franchise. Under new Section 630(b)(1), national franchises take effect 30 days after filing of a completed certification. Under new Section 630(b)(2), franchises last for 10 years, and renew automatically. A franchise authority may require in the last year of the 10-year franchise that the cable operator participate in a public hearing on the cable operator's performance in the franchise area.

New Sections 630(b)(2)(D)–(F) provide the grounds and process by which the Commission may revoke and reinstate a national franchise in a local franchise area. In particular, new Section 630(b)(2)(D) allows the FCC to revoke a national franchise for a franchise area for: (1) willful or repeated violation of Federal or state law or FCC regulations related to the provision of cable service in the local franchise area; (2) knowingly making false statements or material omissions in any FCC filing related to the provision of cable service in the local franchise area; (3) willful or repeated violation of the rights-of-way management laws or regulations of any franchising authority related to the provision of cable service in the franchise area; or (4) willful or repeated violation in the local franchise area of the antidiscrimination provisions of new Section 630(h).

Under new Section 630(b)(2)(G), a franchise authority may file a petition with the FCC to terminate the national franchise of a cable operator that was already providing cable service but obtained a

national franchise under new Section 630(d)(2) if such national franchisee becomes the only cable operator in the franchise area.

New Section 630(c) specifies the obligations of a national franchise. Under new Section 630(c)(1), a local franchising authority may assess upon a national franchisee a franchise fee of up to 5 percent of gross revenues from cable service, the same amount it may assess under current law governing local franchises. The franchise fee is to be collected in the same fashion, and paid directly to the local franchising authority, not to the Commission. New Section 630(c)(2) requires a national franchisee to make a payment of one percent of gross revenues from cable service for support of PEG channels and iNets, as well as abide by other PEG and iNet obligations in accordance with new Section 630(e). New Section 630(c)(3) requires the national franchisee to comply with local rights-of-way requirements pursuant to new Section 630(f). New Section 630(c)(4) requires a national franchisee to comply with national consumer protection and customer service requirements promulgated under existing section 632(b) of the Communications Act and new Section 630(g). New Section 630(c)(5) requires the national franchisee to comply with the child pornography provisions of new Section 630(i).

New Section 630(d) describes who is eligible for a national franchise. Under new Section 630(d)(1), a person or group, including an OVS operator, not currently providing cable service in a franchise area may obtain a national franchise to provide cable service in that franchise area. Under new Section 630(d)(2), a person or group, including an OVS operator, already providing cable service in a franchise area on the date of enactment may obtain a national franchise if another person or group is providing cable service in the franchise area under a local franchise, a statewide franchise, the OVS provisions of section 653, or new Section 630.

New Section 630(e) describes requirements regarding the provision of public, educational, and governmental (PEG) channels, as well as institutional networks (iNets) used for local governmental purposes.

New Section 630(f) preserves the authority of a local franchising authority to impose reasonable, competitively neutral, and nondiscriminatory fees and regulations for the management of its public rights-of-way with respect to the provision of cable services by a nationally franchised cable operator.

New Section 630(g) contains the consumer protection and customer service provisions that apply to a holder of a national franchise.

New Section 630(h) contains the antidiscrimination provisions that apply to a national franchisee. In particular, new Section 630(h)(1) prohibits a cable operator with a national franchise that provides cable service in a franchise area, as such term is defined and identified in new Section 630(a)(3)(F), from denying access to its cable service to any group of potential residential cable service subscribers in such franchise area because of the income of that group. A national franchisee is in violation of the provision if it is offering service to parts of a franchise area identified in its certification, but not to another part of that franchise area because of the income of a group in that other area.

Under new Section 630(h)(2)(A), an LFA may file an antidiscrimination complaint with the FCC if the LFA has reasonable

cause to believe that a holder of a national franchise is violating the antidiscrimination provision. Under new Section 630(h)(2)(B), the LFA must first provide the national franchisee with notice of the allegations and at least 30 days to respond so that the LFA and the national franchisee can try to resolve the dispute. During that period, the LFA may require the national franchisee to provide a written response explaining why the national franchisee does not believe it has violated the antidiscrimination provisions. Under new Section 630(h)(2)(C), the national franchisee must submit a report to the FCC twice a year describing where the national franchisee is offering cable service within its franchise areas and its progress in extending cable service to other parts of those franchise areas.

New Section 630(h)(2)(D) requires the FCC to notify a national franchisee once a complaint has been filed. Under new Section 630(h)(2)(E), the FCC may require a national franchisee to disclose to the FCC information and documents that the FCC deems necessary in its investigation to determine whether there has been a violation. The FCC must maintain the confidentiality of such information or documents. Under new Section 630(h)(2)(F), the FCC must resolve a complaint under this subsection not more than 60 days after receipt.

Under new Section 630(h)(2)(G), the FCC must ensure that the national franchisee extends service to the relevant group within a reasonable period of time if the FCC determines that a violation of new subsection (h) has occurred. In addition, new Section 630(h)(2)(H) provides that the FCC shall enforce new subsection (h) under Titles IV and V of the Communications Act, and may assess a forfeiture penalty of up to $500,000 per day of the violation. Any such forfeiture is to be paid to the relevant LFA. Moreover, under new Section 630(b)(2)(D)(iv), the FCC may revoke a national franchisee's authority to provide cable service in a franchise area for willful or repeated violation of new subsection (h).

New Section 630(i) requires the FCC to promulgate certain regulations pertaining to the distribution of child pornography.

New Section 630(j) clarifies that the leased access provisions in current law regarding the carriage of qualified minority and educational programming shall apply to holders of a national cable franchise.

New Section 630(k) clarifies that existing restrictions on cable operator provision of two other multichannel video programming distribution (MVPD) services—multichannel multipoint distribution service (MMDS) and satellite master antenna television (SMATV) service—do not apply to holders of national franchises. New Section 630(k) also clarifies that certain existing provisions of the Communications Act allowing local franchising authorities to regulate the provision of cable services do not apply to holders of national franchises. The Committee intends that all the other existing provisions of the Communications Act that apply to cable operators shall apply in a comparable manner to holders of national franchises in accordance with new Section 630.

New Section 630(l) clarifies that nothing in the bill prohibits a state or local government from accessing the emergency alert system of a cable operator with a national franchise.

New Section 630(m) lays out auditing provisions intended to ensure that holders of a national franchise comply with their obligations to pay the franchise fees required by new Section 630(c)(1) of the bill, as well as the PEG and iNet support payments required by new Section 630(e)(2).

New Section 630(n) prohibits a vertically integrated cable programming vendor from denying a holder of a national franchise access to programming solely because the national franchisee uses a shared head-end. Some providers of cable service, particularly rural phone companies, share headends to reduce their costs of providing service. New Section 630(n) is designed to prevent a vertically-integrated cable programmer from using the fact that a holder of a national franchise shares a headend as a pretext for denying program access to that national franchise holder in order to restrict competition with the vertically-integrated programmer's cable distribution business. The provision is not intended to prevent the programmer from imposing in a carriage agreement requirements designed to guard against unauthorized receipt or use of programming, to enforce program blackout obligations, to deliver regional feeds, or to require joint and several liability.

New Section 630(o) defines "gross revenues" for purposes of calculating the franchise fee under new Section 630(c)(1) and the PEG and iNet support payment under new Section 630(e)(2).

New Section 630(p) creates additional definitions applicable to new Section 630. New Section 630(p)(1) defines "cable operator" for purposes of new Section 630 to make clear that all holders of a national franchise under this section shall be treated as cable operators for the purposes of the rights and obligations of new Section 630. New Section 630(p)(2) defines "franchise fee." The intent of the Committee in the definition of the term "franchise fee" under section 630(p)(2) is to preserve the rights of states to engage in all manner of taxation and the Committee does not intend to interfere with a state sovereign's ability to levy taxes of any kind. New Section 630(p)(3) defines "Internet access service." New Section 630(p)(4) defines "unit of general local government."

Section 101(b) of the bill requires the FCC to implement the provisions of the bill within 120 days after enactment.

Section 102. Definitions

Section 102 of the bill amends certain cable definitions in the Communications Act. The definitions in current law are already technology neutral, and the mere fact that programming is delivered using Internet-Protocol technology does not mean that the programming is not "video programming" or "other programming," that it is not provided over a "cable system," that its provision is not the provision of "cable service," or that its provider is not a "cable operator," if the definitions of those terms are otherwise met. Nonetheless, the bill adds additional clarifying language in an effort to minimize litigation and to address arguments that the mere use of Internet-Protocol technology for the transmission of programming somehow removes the programming, the service, the facilities, or the provider from the ambit of the definitions. The Committee emphasizes that none of the changes to the cable definitions made by Section 102 are intended to affect the application of any of the definitions, including Section 602(7)(B) of the Communica-

tions Act (47 U.S.C. § 522(7)(B)), which exempts from the "cable system" definition facilities that serve subscribers without using public rights-of-way.

Section 103. Monitoring and reporting

Section 103 of the bill requires the FCC to issue an annual report regarding the deployment of cable services.

Section 201. Enforcement of Broadband Policy Statement

Section 201 creates a new Section 715 of the Communications Act which provides the Commission with the authority to enforce the Commission's Broadband Policy Statement and the principles incorporated therein.

"Sec. 715. Enforcement of Broadband Policy Statement."

New Section 715 provides the Commission with the authority to enforce the Commission's Broadband Policy Statement and the principles incorporated therein. In the policy statement, the Commission provided "guidance and insight into its approach to the Internet and broadband that is consistent with" Congress' directives to the Commission "to preserve the vibrant and competitive free market that presently exists for the Internet," "to promote the continued development of the Internet," and to "encourage[e] the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." Broadband Policy Statement, at ¶ 3 (quoting 47 U.S.C. §§ 230(b)(2), 230(b)(1), 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104–104, 110 Stat. 56 (1996))).

In the policy statement, the FCC adopted the following principles:

- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to access the lawful Internet content of their choice.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to competition among network providers, application and service providers, and content providers.

The FCC adopted these principles "subject to reasonable network management." Broadband Policy Statement, at n.15. While the Commission did not adopt rules in the policy statement, SBC agreed to abide by the principles for two years as a condition of its acquisition of AT&T, and Verizon agreed to abide by the principles for two years as a condition of its acquisition of MCI. Thus, the principles apply today to the network management of two of the largest broadband providers in the United States.

New Section 715(b)(1) provides that the Commission's Broadband Policy Statement shall be enforced by the Commission under Titles

IV and V of the Communications Act. New Section 715(b)(2) gives the FCC the ability to impose a forfeiture penalty of up to $500,000 per violation of the Broadband Policy Statement.

New Section 715(b)(3) provides that the Commission has exclusive authority to adjudicate any complaint alleging a violation of the policy statement and the principles incorporated therein. Thus, a complaint alleging a violation of the policy statement could not be adjudicated by a State Public Utility Commission. The language set forth in section 715(b)(3) in no way adversely affects the ability of any Federal court to exercise its jurisdiction. It also does not affect the applicability or enforceability of the antitrust laws. The FCC is required to complete an adjudicatory proceeding under this section no later than 90 days after receipt of a complaint. If the FCC determines that a violation of the policy statement and the principles incorporated therein has occurred, the Commission has the authority to require the entity subject to the complaint to comply with the Broadband Policy Statement and the principles incorporated therein.

New Section 715(b)(4) provides that, while the Commission has the authority to adopt procedures for the adjudication of complaints alleging a violation of the Broadband Policy Statement or the principles incorporated therein, the Commission does not have the authority to adopt or implement rules or regulations regarding enforcement of the policy statement and principles. It is appropriate to provide the FCC with explicit authority to adjudicate complaints regarding the Commission's Broadband Policy Statement and principles, but not to permit the FCC to promulgate anticipatory, prescriptive rules governing network management by broadband service providers. The broadband market is still a nascent market with rapidly-evolving technology. The FCC could not possibly anticipate how the market will evolve. As a result, anticipatory rules would freeze investment and innovation in broadband networks.

Given the rapid evolution of Internet technology and services and the absence of actual and widely-occurring problems, it is appropriate to limit the FCC's enforcement authority with respect to the broadband principles to an adjudicatory process. The FCC is very familiar with implementing policy through an adjudicatory process rather than rulemaking, and has done so effectively in a number of areas. There is ample precedent for the Commission to address any concerns about network management by broadband operators through case-by-case adjudication rather than through rulemaking.

In the indecency context, the FCC has emphasized the importance of case-by-case determinations. In its 2001 Indecency Policy Statement, for example, the FCC explained that "[i]n determining whether material is patently offensive, the full context in which the material appeared is critically important." In re Industry Guidance On the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency, File No. EB–00–IH–0089, 16 FCC Rcd 7999, ¶ 9 (2001). The FCC observed that it was "difficult to catalog comprehensively all of the possible contextual factors that might exacerbate or mitigate the patent offensiveness of particular material." Id. Nonetheless, the FCC believed that a review of adjudications could provide a set of factors that would help to define offensiveness: the Commission found that each case "presents its own particular mix of [factors]," and that a com-

parison of cases helps to show "the weight these considerations have carried in specific factual contexts." Id. at para 10.

The benefits of a case-by-case review by the FCC rather than a rulemaking are not limited to the indecency context. With respect to pole attachments, the FCC has rejected a request to adopt "more specific rules regarding pole attachment in rights-of-way and wireless pole attachments." In re Implementation of Section 703(e) of the Telecommunications Act of 1996, CS Docket No. 97–98, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, at para. 43 (2001). The FCC explained that it was not "persuaded that our current rules are not satisfactory to provide all parties a process by which they may seek appropriate remedies when negotiations for attachments fail." Id. at para. 45. Furthermore, the FCC stated that it was "prudent to gain experience through case by case adjudication to determine whether additional guiding principles or presumptions are necessary or appropriate, and this will be accomplished through our existing complaint procedures." Id.

In a proceeding involving radio-frequency emissions, the Commission determined that "[w]e also conclude that the other issues raised in the RF Procedures Notice are best addressed through case-by-case adjudication, and we therefore terminate our consideration of these issues in the rulemaking context. In light of developments since the RF Procedures Notice was released, we now believe that binding rules globally resolving these issues are neither necessary nor appropriate." In re Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(C)(7)(B)(V) of the Communications Act of 1934, WT Docket No. 97–192, Report and Order, 15 FCC Rcd 22821, ¶ 2 (2000).

In another radio-frequency emissions proceeding, the Commission asserted that "[w]e will not adopt a specific 'impractability' standard as proposed in the Further Notice as we cannot predict at this time the full range of practical considerations that may be interposed. Instead, the Commission will resolve these matters on a case-by-case basis." In re Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, Gen. Docket No. 90–54, Second Report and Order, 6 FCC Rcd 6792, ¶ 23 (1991).

In addition, in a proceeding regarding video dialtone (an earlier attempt to use telephone networks to provide video services), the FCC found that "[w]e have repeatedly declined to set fixed standards regarding the size and duration of video dialtone proposals to determine whether they constitute trials or commercial offerings, and we do so again here. We continue to believe that a 'case-by-case review of video dialtone proposals better serves the public interest and will allow video dialtone to develop according to market forces.'" In re Application of The Southern England Telephone Company For Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct, operate, own, and maintain facilities to test a new technology for use in providing video dialtone service in specific areas in Connecticut, File No. W–P–C–6858, Order and Authorization, 9 FCC Rcd 7715, ¶ 12 (1994).

To the extent that the Commission should be explicitly granted any authority to resolve complaints involving network management by broadband operators, a case-by-case adjudicatory process is even more appropriate with respect to broadband services than with the communications issues referenced above. The nascent broadband market is characterized by rapidly-changing technology. With such a fluid market, the Commission could not possibly create regulations that reflect the market dynamics in the future. Broadband operators would be forced to plan any potential service or technological upgrades around regulations frozen in time. Such rules would halt broadband investment across the United States and across technological platforms.

In particular, imposing non-discrimination requirements, as the Markey Amendment offered and rejected during both the subcommittee and full committee markups of the COPE Act would have done, could further exacerbate the problems created by the existence of anticipatory rules by prohibiting broadband operators from creating innovative new services and capabilities to distinguish themselves from other operators. As the FCC found when it decided to remove all vestiges of common carrier and non-discrimination regulations that required wireline broadband providers to share their facilities with unaffiliated Internet Service Providers, "the record shows that the existing regulations constrain technological advances and deter broadband infrastructure investment by creating disincentives to the deployment of facilities capable of providing innovative broadband Internet access services * * * fast-paced technological changes and new consumer demands are causing a rapid evolution in the marketplace for these services. Wireline broadband carriers are constrained in their ability to respond to these changes in an efficient, effective, or timely manner as a result of the limitations imposed by these regulations." In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02–33, Report and Order & Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 19 (2005). In addition, the Markey Amendment would impose non-discrimination requirements on services such as cable-modem services and Internet backbone services that have never been subject to such requirements.

New Section 715(c) requires the Commission to complete a study within 180 days of enactment regarding whether the objectives of the policy statement and the principles incorporated therein are being achieved. This study should inform the Committee regarding whether any violations of the policy statement and principles are occurring. The Committee expects that consumers will continue to have access to lawful Internet content, applications, and services of their choice and will be able to attach devices to access such content consistent with the policy statement. If the Commission's study demonstrates otherwise, further Committee action will be necessary.

Section 301. Emergency services; interconnection

Section 301 creates two new sections to the Communications Act of 1934. New Section 716 requires VOIP providers to offer 911 and E911 services to consumers, and new Section 717 permits VOIP service providers to assert the rights, duties, and obligations of

telecommunications carriers for the purpose of interconnecting with telecommunications carriers.

"Sec. 716. Emergency Services."

New Section 716 requires VOIP providers to offer 911 and E911 services to consumers where technologically and operationally feasible. Until the FCC's regulations implementing new Section 716 are promulgated, the FCC's existing regulations that apply to VOIP service providers, other than the regulations as they apply to new customers, remain in effect. New Section 716(b) ensures that VOIP providers are granted access to the infrastructure and databases necessary for them to provide E911 services to consumers where such access is technologically and operationally feasible. A VOIP service provider may obtain access to such infrastructure pursuant to new Section 717 as described below. Consistent with new Section 716(e), the Committee expects for such access to be provided without unreasonable delay to enable VOIP service providers to comply with the requirements and deadlines imposed by this section.

New Section 716(c) provides that a VOIP service provider is required to make 911 service available to new customers within a reasonable period of time. For all new customers not within the geographic areas where a VOIP service provider can immediately provide 911 service to the geographically-appropriate Public Safety Answering Point (PSAP), a VOIP service provider, or its third-party vendor, shall have no more than 30 days from the date the VOIP provider has acquired a customer to order connectivity to the selective router. In such areas, the VOIP service provider must provide 911 service, or E911 service where the PSAP is capable of receiving and processing such information.

For all new customers not within the geographic areas where the VOIP service provider can immediately provide 911 service to the geographically-appropriate PSAP, a VOIP service provider is required to provide 911 service either through an arrangement mutually agreed to by the VOIP service provider and the PSAP or through an emergency response center with national call routing capabilities. Either of these options must ensure that 911 service is provided 24 hours per day from the date the VOIP service provider acquires a customer until the provider can provide 911 service to the geographically-appropriate PSAP.

Before providing service to a new customer not within a geographic area where the VOIP service provider can immediately provide 911 service to the geographically-appropriate PSAP, such provider must provide such customer with clear notice that 911 service will only be available as described above. A VOIP service provider may not acquire a new customer within a geographic area served by a selective router if, within 180 days of first acquiring a new customer in such area, the provider does not provide 911 service, or E911 service where the PSAP is capable of receiving and processing such information, for all existing customers served by the selective router.

New Section 716(e) provides that, in determining whether (1) the provision of 911 and E911 service by VOIP service providers and (2) access to the infrastructure and databases necessary for VOIP service providers to provide E911 service are technically and operationally feasible, the Commission shall take into consideration available industry technological and operational standards.

New Section 716(h) requires the FCC to establish an emergency routing number administrator within 30 days. New Section 716(i) requires a report on the migration to a national IP-enabled emergency network.

"Sec. 717. Rights and Obligations of VOIP Service Providers."

New Section 717(a) of the Communications Act that permits VOIP service providers to assert the rights, duties, and obligations of telecommunications carriers for the purpose of interconnecting with telecommunications carriers. Facilities-based VOIP service providers are granted the same rights, duties, and obligations as a requesting telecommunications carrier under sections 251 and 252 of the Communications Act. The term 'facilities-based VOIP service provider' means an entity that provides VOIP service over a physical facility that terminates at the end user's location and which such entity or an affiliate owns or over which such entity or affiliate has exclusive use (including through access to unbundled network elements). An entity or affiliate shall be considered a facilities-based VOIP service provider only in those geographic areas where such physical facilities are located.

Other VOIP service providers are granted the same rights, duties, and obligations as a requesting telecommunications carrier under sections 251(b), 251(e), and 252. New Section 717(a)(3) clarifies that a telecommunications carrier may use interconnection, services, and network elements obtained pursuant to sections 251 and 252 from an incumbent local exchange carrier (as such term is defined in section 251(h)) to exchange VOIP service traffic with such incumbent local exchange carrier regardless of the provider originating such VOIP service traffic, including an affiliate of such telecommunications carrier.

Under new Section 717(b), a VOIP service provider and a manufacturer of equipment for such services have the same rights, duties, and obligations with respect to access by persons with disabilities as a requesting telecommunications carrier and a telecommunications equipment manufacturer, respectively, under sections 225, 255, and 710 of the Communications Act if such service, or the equipment used for such service, is marketed as a substitute for telecommunications service, telecommunications equipment, customer premises equipment, or telecommunications relay services. This provision is intended to ensure that VOIP service is accessible to the disabled to the same extent that traditional telephone service is accessible to the disabled. The Committee does not intend, however, to suggest that VOIP services are "telecommunications services," which are generally subject to Title II of the Communications Act, or that VOIP service providers must provide disability access using the same technologies used by telecommunications carriers.

Under new Section 717(c), a VOIP service provider is required to provide clear and conspicuous notice to a customer, prior to the installation or number activation of VOIP service, that the customer should notify his or her emergency response system provider after installation of the VOIP service and arrange for a test of such system, and that a battery backup is required for the customer premises equipment installed in connection with the VOIP service in order for the signaling of such system to function in the event of a power outage.

Section 401. Government authority to provide services

Section 401 prohibits states from prohibiting or having the effect of prohibiting public providers such as local government from providing telecommunications, information, or cable services. States and localities may not grant any preference or advantage to a public provider of such services that a state or locality owns, controls, or with which it is otherwise affiliated. Public providers of such communications services must abide by the same laws and regulations as commercial providers of such services. Not later than one year after the date of enactment, the Commission must submit a report on the status of the provision of telecommunications services, information services, and cable services by public providers of such services.

Section 501. Stand-alone broadband service

Section 501 creates a new Section 718 of the Communications Act that prohibits a broadband service provider from requiring a subscriber, as a condition on the purchase of any broadband service, to purchase cable service, telecommunications service, or VOIP service offered by the provider.

"Sec. 718. Stand-alone Broadband Services."

New Section 718 of the Communications Act prohibits a broadband service provider from requiring a subscriber, as a condition on the purchase of any broadband service, to purchase cable service, telecommunications service, or VOIP service offered by the provider. However, nothing in new Section 718 requires a broadband service provider to offer a stand-alone version of broadband service at the same price at which it offers such service bundled with other services.

Section 502. Study of interference potential of broadband over power line systems

Section 502 requires the Commission to complete a study on the interference potential of broadband over power line systems.

Section 601. Development of seamless mobility

Section 601 requires the Commission to further the development of seamless mobility, which is defined as the ability of a communications device to select between and utilize multiple Internet protocol-enabled technology platforms, facilities, and networks in a real-time manner to provide a unified service. Within 120 days of enactment, the Commission must implement a process for streamlined review and authorization of multi-mode devices that permit communication across multiple Internet protocol-enabled broadband platforms, facilities, and networks.

The Commission is required to undertake an inquiry to identify barriers to the achievement of seamless mobility. Within 180 days after the date of enactment of this Act, the Commission is required to report to the Congress on its findings and its recommendations for steps to eliminate such barriers.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

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TITLE VI—CABLE COMMUNICATIONS

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PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 602. DEFINITIONS.

For purposes of this title—

(1) * * *

* * * * * * *

(4) the terms "cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation*), or its equivalent as determined by the Commission*;

(5) the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system *(regardless of whether such person or group provides such service separately or combined with a telecommunications service or information service)* and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

[(6) the term "cable service" means—

[(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

[(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;]

(6) the term "cable service" means—

(A)(i) the one-way transmission to subscribers of (I) video programming, or (II) other programming service; and

(ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; or

(B) the transmission to subscribers of video programming or other programming service provided through wireline facilities located at least in part in the public rights-of-way, without regard to delivery technology, including Internet protocol technology, except to the extent that such video programming or other programming service is provided as part of—

(i) a commercial mobile service (as such term is defined in section 332(d)); or

(ii) an Internet access service (as such term is defined in section 630(p)).

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PART III—FRANCHISING AND REGULATION

* * * * * * *

SEC. 630. NATIONAL CABLE FRANCHISING.

(a) NATIONAL FRANCHISES.—

(1) ELECTION.—A person or group that is eligible under subsection (d) may elect to obtain a national franchise under this section as authority to provide cable service in a franchise area in lieu of any other authority under Federal, State, or local law to provide cable service in such franchise area. A person or group may not provide cable service under the authority of this section in a franchise area unless such person or group has a franchise under this section that is effective with respect to such franchise area. A franchising authority may not require any person or group that has a national franchise under this section in effect with respect to a franchise area to obtain a franchise under section 621 or any other law to provide cable service in such franchise area.

(2) CERTIFICATION.—To obtain a national franchise under this section as authority to provide cable service in a franchise area, a person or group shall—

(A) file with the Commission a certification for a national franchise containing the information required by paragraph (3) with respect to such franchise area, if such person or group has not previously obtained a national franchise; or

(B) file with the Commission a subsequent certification for additional franchise areas containing the information required by paragraph (3) with respect to such additional franchise areas, if such person or group has previously obtained a national franchise.

(3) CONTENTS OF CERTIFICATION.—Such certification shall be in such form as the Commission shall require by regulation and shall contain—

(A) the name under which such person or group is offering or intends to offer cable service;

(B) the names and business addresses of the directors and principal executive officers, or the persons performing similar functions, of such person or group;

(C) the location of such person or group's principal business office;

(D) the name, business address, electronic mail address, and telephone and fax number of such person or group's local agent;

(E) a declaration by such person or group that such person or group is eligible under subsection (d) to obtain a national franchise under this section;

(F) an identification of each franchise area in which such person or group intends to offer cable service pursuant to such certification, which franchise area shall be—

(i) the entirety of a franchise area in which a cable operator is, on the date of the filing of such certification, authorized to provide cable service under section 621 or any other law (including this section); or

(ii) a contiguous geographic area that covers the entirety of the jurisdiction of a unit of general local government, except that—

(I) if the geographic area within the jurisdiction of such unit of general local government contains a franchise area in which a cable operator is, on such date, authorized to provide cable service under section 621 or any other law, the contiguous geographic area identified in the certification under this clause as a franchise area shall not include the area contained in the franchise area of such cable operator; and

(II) if such contiguous geographic area includes areas that are, respectively, within the jurisdiction of different franchising authorities, the certification shall specify each such area as a separate franchise area;

(G) a declaration that such person or group transmitted, or will transmit on the day of filing such declaration, a copy of such certification to the franchising authority for each franchise area for which such person or group is filing a certification to offer cable service under this section;

(H) a declaration by the person or group that the person or group will comply with the rights-of-way requirements of the franchising authority under subsection (f); and

(I) a declaration by the person or group that—

(i) the person or group will comply with all Commission consumer protection and customer service rules under section 632(b) and subsection (g) of this section; and

(ii) the person or group agrees that such standards may be enforced by the Commission or by the franchising authority in accordance with subsection (g) of this section.

(4) LOCAL NOTIFICATION; PRESERVATION OF OPPORTUNITY TO NEGOTIATE.—

(A) COPY TO FRANCHISING AUTHORITY.—On the day of filing any certification under paragraph (2)(A) or (B) for a franchise area, the person or group shall transmit a copy of such certification to the franchising authority for such area.

(B) NEGOTIATED FRANCHISE AGREEMENTS PERMITTED.—Nothing in this section shall prevent a person or group from negotiating a franchise agreement or any other authority to provide cable service in a franchise area under section 621 or any other law. Upon entry into any such negotiated franchise agreement, such negotiated franchise agreement shall apply in lieu of any national franchise held by that person or group under this section for such franchise area.

(5) UPDATING OF CERTIFICATIONS.—A person or group that files a certification under this section shall update any information contained in such certification that is no longer accurate and correct.

(6) PUBLIC AVAILABILITY OF CERTIFICATIONS.—The Commission shall provide for the public availability on the Commission's Internet website or other electronic facility of all current certifications filed under this section.

(b) EFFECTIVENESS; DURATION.—

(1) EFFECTIVENESS.—A national franchise under this section shall be effective with respect to any franchise area 30 days after the date of the filing of a completed certification under subsection (a)(2)(A) or (B) that applies to such franchise area.

(2) DURATION.—

(A) IN GENERAL.—A franchise under this section that applies to a franchise area shall be effective for that franchise area for a term of 10 years.

(B) RENEWAL.—A franchise under this section for a franchise area shall be renewed automatically upon expiration of the 10-year period described in subparagraph (A).

(C) PUBLIC HEARING.—At the request of a franchising authority in a franchise area, a cable operator authorized under this section to provide cable service in such franchise area shall, within the last year of the 10-year period applicable under subparagraph (A) to the cable operator's franchise for such franchise area, participate in a public hearing on the cable operator's performance in the franchise area, including the cable operator's compliance with the requirements of this title. The hearing shall afford the public the opportunity to participate for the purpose of identifying cable-related community needs and interests and assessing the operator's performance. The cable operator shall provide notice to its subscribers of the hearing at least 30 days prior to the hearing.

(D) REVOCATION.—A franchise under this section for a franchise area may be revoked by the Commission—

(i) for willful or repeated violation of any Federal or State law, or any Commission regulation, relating to the provision of cable service in such franchise area;

(ii) for false statements or material omissions knowingly made in any filing with the Commission relating to the provision of cable service in such franchise area;

(iii) for willful or repeated violation of the rights-of-way management laws or regulations of any franchising authority in such franchise area relating to the provision of cable service in such franchise area; or

(iv) for willful or repeated violation of the anti-discrimination requirement of subsection (h) with respect to such franchise area.

(E) NOTICE.—The Commission shall send a notice of such revocation to each franchising authority with jurisdiction over the franchise areas for which the cable operator's franchise was revoked.

(F) REINSTATEMENT.—After a revocation under subparagraph (D) of a franchise for a franchise area of any person

or group, the Commission may refuse to accept for filing a new certification for authority of such person or group to provide cable service under this section in such franchise area until the Commission determines that the basis of such revocation has been remedied.

(G) RETURN TO LOCAL FRANCHISING IF CABLE COMPETITION CEASES.—

(i) If only one cable operator is providing cable service in a franchise area, and that cable operator obtained a national franchise for such franchise area under subsection (d)(2), the franchising authority for such franchise area may file a petition with the Commission requesting that the Commission terminate such national franchise for such franchise area.

(ii) The Commission shall provide public notice and opportunity to comment on such petition. If it finds that the requirements of clause (i) are satisfied, the Commission shall issue an order granting such petition. Such order shall take effect one year from the date of such grant, if no other cable operator offers cable service in such area during that one year. If another cable operator does offer cable service in such franchise area during that one year, the Commission shall rescind such order and dismiss such petition.

(iii) A cable operator whose national franchise is terminated for such franchise area under this subparagraph may obtain new authority to provide cable service in such franchise area under this section, section 621, or any other law, if and when eligible.

(c) REQUIREMENTS OF NATIONAL FRANCHISE.—A national franchise shall contain the following requirements:

(1) FRANCHISE FEE.—A cable operator authorized under this section to provide cable service in a franchise area shall pay to the franchising authority in such franchise area a franchise fee of up to 5 percent (as determined by the franchising authority) of such cable operator's gross revenues from the provision of cable service under this section in such franchise area. Such payment shall be assessed and collected in a manner consistent with section 622 and the definition of gross revenues in this section.

(2) PEG/I-NET REQUIREMENTS.—A cable operator authorized under this section to provide cable service in a franchise area shall comply with the requirements of subsection (e).

(3) RIGHTS-OF-WAY.—A cable operator authorized under this section to provide cable service in a franchise area shall comply with the rights-of-way requirements of the franchising authority under subsection (f).

(4) CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS.—A cable operator authorized under this section to provide cable service in a franchise area shall comply with the consumer protection and customer service standards established by the Commission under section 632(b).

(5) CHILD PORNOGRAPHY.—A cable operator authorized under this section to provide cable service in a franchise area shall

comply with the regulations on child pornography promulgated pursuant to subsection (i).

(d) ELIGIBILITY FOR NATIONAL FRANCHISES.—The following persons or groups are eligible to obtain a national franchise under this section:

(1) COMMENCEMENT OF SERVICE AFTER ENACTMENT.—A person or group that is not providing cable service in a franchise area on the date of enactment of this section under section 621 or any other law may obtain a national franchise under this section to provide cable service in such franchise area.

(2) EXISTING PROVIDERS OF CABLE SERVICE.—A person or group that is providing cable service in a franchise area on the date of enactment of this section under section 621 or any other law may obtain a franchise under this section to provide cable service in such franchise area if, on the date that the national franchise becomes effective, another person or group is providing cable service under this section, section 621, or any other law in such franchise area.

(e) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL USE.—

(1) IN GENERAL.—Subject to paragraph (3), a cable operator with a national franchise for a franchise area under this section shall provide channel capacity for public, educational, and governmental use that is not less than the channel capacity required of the cable operator with the most subscribers in such franchise area on the effective date of such national franchise. If there is no other cable operator in such franchise area on the effective date of such national franchise, or there is no other cable operator in such franchise area on such date that is required to provide channel capacity for public, educational, and governmental use, the cable operator shall provide the amount of channel capacity for such use as determined by Commission rule.

(2) PEG AND I–NET FINANCIAL SUPPORT.—A cable operator with a national franchise under this section for a franchise area shall pay an amount equal to 1 percent of the cable operator's gross revenues (as such term is defined in this section) in the franchise area to the franchising authority for the support of public, educational, and governmental use and institutional networks (as such term is defined in section 611(f)). Such payment shall be assessed and collected in a manner consistent with section 622, including the authority of the cable operator to designate that portion of a subscriber's bill attributable to such payment. A cable operator that provided cable service in a franchise area on the date of enactment of this section and that obtains a national franchise under this section shall continue to provide any institutional network that it was required to provide in such franchise area under section 621 or any other law. Notwithstanding section 621(b)(3)(D), a franchising authority may not require a cable operator franchised under this section to construct a new institutional network.

(3) ADJUSTMENT.—Every 10 years after the commencement of a franchise under this section for a franchise area, a franchising authority may require a cable operator authorized under such franchise to increase the channel capacity designated for public, educational, or governmental use, and the

channel capacity designated for such use on any institutional networks required under paragraph (2). Such increase shall not exceed the higher of—

(A) one channel; or

(B) 10 percent of the public, educational, or governmental channel capacity required of that operator prior to the increase.

(4) TRANSMISSION AND PRODUCTION OF PROGRAMMING.—

(A) A cable operator franchised under this section shall ensure that all subscribers receive any public, educational, or governmental programming carried by the cable operator within the subscriber's franchise area.

(B) The production of any programming provided under this subsection shall be the responsibility of the franchising authority.

(C) A cable operator franchised under this section shall be responsible for the transmission from the signal origination point (or points) of the programming, or from the point of interconnection with another cable operator under subparagraph (D), to the cable operator's subscribers, of any public, educational, or governmental programming produced by or for the franchising authority and carried by the cable operator pursuant to this section.

(D) Unless two cable operators otherwise agree to the terms for interconnection and cost sharing, such cable operators shall comply with regulations prescribed by the Commission providing for—

(i) the interconnection between two cable operators in a franchise area for transmission of public, educational, or governmental programming, without material deterioration in signal quality or functionality; and

(ii) the reasonable allocation of the costs of such interconnection between such cable operators.

(E) A cable operator shall display the program information for public, educational, or governmental programming carried under this subsection in any print or electronic program guide in the same manner in which it displays program information for other video programming in the franchise area. The cable operator shall not omit such public, educational, or governmental programming from any navigational device, guide, or menu containing other video programming that is available to subscribers in the franchise area.

(f) RIGHTS-OF-WAY.—

(1) AUTHORITY TO USE.—Any franchise under this section for a franchise area shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure that—

(A) the safety, functioning, and appearance of the property and the convenience and the safety of other persons not

be adversely affected by the installation or construction of facilities necessary for a cable system;

(B) the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(C) the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

(2) MANAGEMENT OF PUBLIC RIGHTS-OF-WAY.—Nothing in this Act affects the authority of a State or local government (including a franchising authority) over a person or group in their capacity as a cable operator with a franchise under this section to manage, on a reasonable, competitively neutral, and non-discriminatory basis, the public rights-of-way, and easements that have been dedicated for compatible uses. A State or local government (including a franchising authority) may, on a reasonable, competitively neutral, and non-discriminatory basis—

(A) impose charges for such management; and

(B) require compliance with such management, such charges, and paragraphs (1)(A), (B), and (C).

(g) CONSUMER PROTECTION AND CUSTOMER SERVICE.—

(1) NATIONAL STANDARDS.—Notwithstanding section 632(d), no State or local law (including any regulation) shall impose on a cable operator franchised under this section any consumer protection or customer service requirements other than consumer protection or customer service requirements of general applicability.

(2) PROCEEDING.—Within 120 days after the date of enactment of this section, the Commission shall issue a report and order that updates for cable operators franchised under this section the national consumer protection and customer service rules under section 632(b), taking into consideration the national nature of a franchise under this section and the role of State and local governments in enforcing, but not creating, consumer protection and customer service standards for cable operators franchised under this section.

(3) REQUIREMENTS OF NEW RULES.—

(A) Such rules shall, in addition to the requirements of section 632(b), address, with specificity, no less than the following consumer protection and customer service issues:

(i) Billing, billing disputes, and discontinuation of service, including when and how any late fees may be assessed (but not the amount of such fees).

(ii) Loss of service or service quality.

(iii) Changes in channel lineups or other cable services and features.

(iv) Availability of parental control options.

(B) Such rules shall require forfeiture penalties or customer rebates, or both, as determined by the Commission, that may be imposed for violations of such Commission rules in a franchise area, and shall provide for increased forfeiture penalties or customer rebates, or both, for repeated violations of the standards in such rules.

(C) The Commission's rules shall also establish procedures by which any forfeiture penalty assessed by the Commission under this subsection shall be paid by the cable operator directly to the franchising authority.

(D) The Commission shall report to the Congress no less than once a year—

(i) on complaints filed, and penalties imposed, under this subsection; and

(ii) on any new consumer protection or customer service issues arising under this subsection.

(E) The Commission's rules established under this subsection shall be revised as needed.

(4) COMPLAINTS.—Any person may file a complaint with respect to a violation of the regulations prescribed under section 632(b) in a franchise area by a cable operator franchised under this section—

(A) with the franchising authority in such area; or

(B) with the Commission.

(5) LOCAL FRANCHISING ORDERS REQUIRING COMPLIANCE.—In a proceeding commenced with a franchising authority on such a complaint, a franchising authority may issue an order requiring compliance with any of such regulations prescribed by the Commission, but a franchising authority may not create any new standard or regulation, or expand upon or modify the Commission's standards or regulations.

(6) ACCESS TO RECORDS.—In such a proceeding, the franchising authority may issue an order requiring the filing of any contract, agreement, or arrangement between the subscriber and the provider, or any other data, documents, or records, directly related to the alleged violation.

(7) COMMISSION REMEDIES; APPEALS.—Unless appealed to the Commission, an order of a franchising authority under this subsection shall be enforced by the Commission. Any such appeal shall be resolved by the Commission within 30 days after receipt of the appeal by the Commission.

(8) COST OF FRANCHISING AUTHORITY ORDERS.—A franchising authority may charge a provider of cable service under this section a nominal fee to cover the costs of issuing such orders.

(h) ANTIDISCRIMINATION.—

(1) PROHIBITION.—A cable operator with a national franchise under this section to provide cable service in a franchise area shall not deny access to its cable service to any group of potential residential cable service subscribers in such franchise area because of the income of that group.

(2) ENFORCEMENT.—

(A) COMPLAINT.—If a franchising authority in a franchise area has reasonable cause to believe that a cable operator is in violation of this subsection with respect to such franchise area, the franchising authority may, after complying with subparagraph (B), file a complaint with the Commission alleging such violation.

(B) NOTICE BY FRANCHISING AUTHORITY.—Before filing a complaint with the Commission under subparagraph (A), a franchising authority—

(i) shall give notice of each alleged violation to the cable operator;

(ii) shall provide a period of not less than 30 days for the cable operator to respond to such allegations; and

(iii) during such period, may require the cable operator to submit a written response stating the reasons why the operator has not violated this subsection.

(C) BIANNUAL REPORT.—A cable operator with a national franchise under this section for a franchise area, not later than 180 days after the effective date of such national franchise, and biannually thereafter, shall submit a report to the Commission and the franchising authority in the franchise area—

(i) identifying the geographic areas in the franchise area where the cable operator offers cable service; and

(ii) describing the cable operator's progress in extending cable service to other areas in the franchise area.

(D) NOTICE BY COMMISSION.—Upon receipt of a complaint under this paragraph alleging a violation of this subsection by a cable operator, the Commission shall give notice of the complaint to the cable operator.

(E) INVESTIGATION.—In investigating a complaint under this paragraph, the Commission may require a cable operator to disclose to the Commission such information and documents as the Commission deems necessary to determine whether the cable operator is in compliance with this subsection. The Commission shall maintain the confidentiality of any information or document collected under this subparagraph.

(F) DEADLINE FOR RESOLUTION OF COMPLAINTS.—Not more than 60 days after the Commission receives a complaint under this paragraph, the Commission shall issue a determination with respect to each violation alleged in the complaint.

(G) DETERMINATION.—If the Commission determines (in response to a complaint under this paragraph or on its own initiative) that a cable operator with a franchise under this section to provide cable service in a franchise area has denied access to its cable service to a group of potential residential cable service subscribers in such franchise area because of the income of that group, the Commission shall ensure that the cable operator extends access to that group within a reasonable period of time.

(H) REMEDIES.—

(i) IN GENERAL.—This subsection shall be enforced by the Commission under titles IV and V.

(ii) MAXIMUM FORFEITURE PENALTY.—For purposes of section 503, the maximum forfeiture penalty applicable to a violation of this subsection shall be $500,000 for each day of the violation.

(iii) PAYMENT OF PENALTIES TO FRANCHISING AUTHORITY.—The Commission shall order any cable operator subject to a forfeiture penalty under this sub-

section to pay the penalty directly to the franchising authority involved.

(i) CHILD PORNOGRAPHY.—Not later than 180 days after the date of enactment of this section, the Commission shall promulgate regulations to require a cable operator with a national franchise under this section to prevent the distribution of child pornography (as such term is defined in section 254(h)(7)(F)) over its network.

(j) LEASED ACCESS.—The provisions of section 612(i) regarding the carriage of programming from a qualified minority programming source or from any qualified educational programming source shall apply to a cable operator franchised under this section to provide cable service in a franchise area.

(k) APPLICABILITY OF OTHER PROVISIONS.—The following sections shall not apply in a franchise area to a person or group franchised under this section in such franchise area, or confer any authority to regulate or impose obligations on such person or group: Sections 611(a), 611(b), 611(c), 613(a), 617, 621 (other than subsections (b)(3)(A), (b)(3)(B), (b)(3)(C), and (c)), 624(b), 624(c), 624(h), 625, 626, 627, and 632(a).

(l) EMERGENCY ALERTS.—Nothing in this Act shall be construed to prohibit a State or local government from accessing the emergency alert system of a cable operator with a franchise under this section in the area served by the State or local government to transmit local or regional emergency alerts.

(m) REPORTING, RECORDS, AND AUDITS.—

(1) REPORTING.—A cable operator with a franchise under this section to provide cable service in a franchise area shall make such periodic reports to the Commission and the franchising authority for such franchise area as the Commission may require to verify compliance with the fee obligations of subsections (c)(1) and (e)(2).

(2) AVAILABILITY OF BOOKS AND RECORDS.—Upon request under paragraph (3) by a franchising authority for a franchise area, and upon request by the Commission, a cable operator with a national franchise for such franchise area shall make available its books and records to periodic audit by such franchising authority or the Commission, respectively.

(3) FRANCHISING AUTHORITY AUDIT PROCEDURE.—A franchising authority may, upon reasonable written request, but no more than once in any 12-month period, review the business records of such cable operator to the extent reasonably necessary to ensure payment of the fees required by subsections (c)(1) and (e)(2). Such review may include the methodology used by such cable operator to assign portions of the revenue from cable service that may be bundled or functionally integrated with other services, capabilities, or applications. Such review shall be conducted in accordance with procedures established by the Commission.

(4) COST RECOVERY.—

(A) To the extent that the review under paragraph (3) identifies an underpayment of an amount meeting the minimum percentage specified in subparagraph (B) of the fee required under subsections (c)(1) and (e)(2) for the period of review, the cable operator shall reimburse the franchising authority the reasonable costs of any such review conducted

by an independent third party, as determined by the Commission, with respect to such fee. The costs of any contingency fee arrangement between the franchising authority and the independent reviewer shall not be subject to reimbursement.

(B) The Commission shall determine by rule the minimum percentage underpayment that requires cost reimbursement under subparagraph (A).

(5) LIMITATION.—Any fee that is not reviewed by a franchising authority within 3 years after it is paid or remitted shall not be subject to later review by the franchising authority under this subsection and shall be deemed accepted in full payment by the franchising authority.

(n) ACCESS TO PROGRAMMING FOR SHARED FACILITIES.—

(1) PROHIBITION.—A cable programming vendor in which a cable operator has an attributable interest shall not deny a cable operator with a national franchise under this section access to video programming solely because such cable operator uses a headend for its cable system that is also used, under a shared ownership or leasing agreement, as the headend for another cable system.

(2) DEFINITION.—The term "cable programming vendor" means a person engaged in the production, creation, or wholesale distribution for sale of video programming which is primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers.

(o) GROSS REVENUES.—As used in this section:

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the term "gross revenues" means all consideration of any kind or nature, including cash, credits, property, and in-kind contributions (services or goods) received by the cable operator from the provision of cable service within the franchise area.

(2) INCLUDED ITEMS.—Subject to paragraph (3), the term "gross revenues" shall include the following:

(A) all charges and fees paid by subscribers for the provision of cable service, including fees attributable to cable service when sold individually or as part of a package or bundle, or functionally integrated, with services other than cable service;

(B) any franchise fee imposed on the cable operator that is passed on to subscribers;

(C) compensation received by the cable operator for promotion or exhibition of any products or services over the cable service, such as on "home shopping" or similar programming;

(D) revenue received by the cable operator as compensation for carriage of video programming or other programming service on that operator's cable service;

(E) all revenue derived from the cable operator's cable service pursuant to compensation arrangements for advertising; and

(F) any advertising commissions paid to an affiliated third party for cable services advertising.

(3) EXCLUDED ITEMS.—The term "gross revenues" shall not include the following:

(A) any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt;

(B) refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already offset by subparagraph (A) and to the extent such refund, rebate, credit, or discount is attributable to the cable service;

(C) subject to paragraph (4), any revenues received by the cable operator or its affiliates from the provision of services or capabilities other than cable service, including telecommunications services, Internet access services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionally integrated, with cable service;

(D) any revenues received by the cable operator or its affiliates for the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing;

(E) any amounts attributable to the provision of cable service to customers at no charge, including the provision of such service to public institutions without charge;

(F) any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a Federal, State, or local government or any other governmental entity, collected by the provider, and required to be remitted to the taxing entity, including sales and use taxes and utility user taxes;

(G) any forgone revenue from the provision of cable service at no charge to any person, except that any forgone revenue exchanged for trades, barters, services, or other items of value shall be included in gross revenue;

(H) sales of capital assets or surplus equipment;

(I) reimbursement by programmers of marketing costs actually incurred by the cable operator for the introduction of new programming; and

(J) the sale of cable services for resale to the extent the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect thereto.

(4) FUNCTIONALLY INTEGRATED SERVICES.—In the case of a cable service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the cable operator's revenue attributable to such other services, capabilities, or applications shall be included in gross revenue unless the cable operator can reasonably identify the division or exclusion of such revenue from its books and records that are kept in the regular course of business.

(5) AFFILIATE REVENUE.—Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of such revenue as revenue of the affiliate has the effect (whether intentional or unintentional) of evading the payment of franchise fees which would otherwise be paid for cable service.

(6) AFFECT ON OTHER LAW.—Nothing in this section is intended to limit a franchising authority's rights pursuant to section 622(h).

(p) ADDITIONAL DEFINITIONS.—For purposes of this section:

(1) CABLE OPERATOR.—The term "cable operator" has the meaning provided in section 602(5) except that such term also includes a person or group with a national franchise under this section.

(2) FRANCHISE FEE.—

(A) The term "franchise fee" includes any fee or assessment of any kind imposed by a franchising authority or other governmental entity on a person or group providing cable service in a franchise area under this section, or on a subscriber of such person or group, or both, solely because of their status as such.

(B) The term "franchise fee" does not include—

(i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and a person or group providing cable service in a franchise area under this section (or the services of such person or group) but not including a fee or assessment which is unduly discriminatory against such person or group or the subscribers of such person or group);

(ii) any fee assessed under subsection (e)(2) for support of public, educational, and governmental use and institutional networks (as such term is defined in section 611(f));

(iii) requirements or charges under subsection (f)(2) for the management of public rights-of-way, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(iv) any fee imposed under title 17, United States Code.

(3) INTERNET ACCESS SERVICE.—The term "Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet.

(4) UNIT OF GENERAL LOCAL GOVERNMENT.—The term "unit of general local government" means—

(A) a county, township, city, or political subdivision of a county, township, or city;

(B) the District of Columbia; or

(C) the recognized governing body of an Indian tribe or Alaskan Native village that carries out substantial governmental duties and powers.

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TITLE VII—MISCELLANEOUS PROVISIONS

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SEC. 715. ENFORCEMENT OF BROADBAND POLICY STATEMENT.

(a) AUTHORITY.—The Commission shall have the authority to enforce the Commission's broadband policy statement and the principles incorporated therein.

(b) ENFORCEMENT.—

(1) IN GENERAL.—This section shall be enforced by the Commission under titles IV and V. A violation of the Commission's broadband policy statement or the principles incorporated therein shall be treated as a violation of this Act.

(2) MAXIMUM FORFEITURE PENALTY.—For purposes of section 503, the maximum forfeiture penalty applicable to a violation described in paragraph (1) of this subsection shall be $500,000 for each violation.

(3) ADJUDICATORY AUTHORITY.—The Commission shall have exclusive authority to adjudicate any complaint alleging a violation of the broadband policy statement and the principles incorporated therein. The Commission shall complete an adjudicatory proceeding under this subsection not later than 90 days after receipt of the complaint. If, upon completion of an adjudicatory proceeding pursuant to this section, the Commission determines that such a violation has occurred, the Commission shall have authority to adopt an order to require the entity subject to the complaint to comply with the broadband policy statement and the principles incorporated therein. Such authority shall be in addition to the authority specified in paragraph (1) to enforce this section under titles IV and V. In addition, the Commission shall have authority to adopt procedures for the adjudication of complaints alleging a violation of the broadband policy statement or principles incorporated therein.

(4) LIMITATION.—Notwithstanding paragraph (1), the Commission's authority to enforce the broadband policy statement and the principles incorporated therein does not include authorization for the Commission to adopt or implement rules or regulations regarding enforcement of the broadband policy statement and the principles incorporated therein, with the sole exception of the authority to adopt procedures for the adjudication of complaints, as provided in paragraph (3).

(c) STUDY.—Within 180 days after the date of enactment of this section, the Commission shall conduct, and submit to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation, a study regarding whether the objectives of the broadband policy statement and the principles incorporated therein are being achieved.

(d) DEFINITION.—For purposes of this section, the term "Commission's broadband policy statement" means the policy statement adopted on August 5, 2005, and issued on September 23, 2005, In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, and other Matters (FCC 05–151; CC Docket No. 02–33; CC Docket No. 01–337; CC Docket Nos. 95–20, 98–10; GN Docket No. 00–185; CS Docket No. 02–52).

SEC. 716. EMERGENCY SERVICES.

(a) 911 AND E–911 SERVICES.—

(1) IN GENERAL.—Each VOIP service provider has a duty to ensure that 911 and E–911 services are provided to subscribers of VOIP services.

(2) USE OF EXISTING REGULATIONS.—A VOIP service provider that complies with the Commission's regulations requiring providers of VOIP service to supply 911 and E911 capabilities to their customers (Report and Order in WC Docket Nos. 04–36

and 05–196) and that are in effect on the date of enactment of this section shall be considered to be in compliance with the requirements of this section, other than subsection (c), until such regulations are modified or superseded by subsequent regulations.

(b) NON-DISCRIMINATORY ACCESS TO CAPABILITIES.—

(1) ACCESS.—Each incumbent local exchange carrier (as such term is defined in section 251(h)) or government entity with ownership or control of the necessary E–911 infrastructure shall provide any requesting VOIP service provider with nondiscriminatory access to such infrastructure. Such carrier or entity shall provide access to the infrastructure at just and reasonable, nondiscriminatory rates, terms, and conditions. Such access shall be consistent with industry standards established by the National Emergency Number Association or other applicable industry standards organizations.

(2) ENFORCEMENT.—The Commission or a State commission may enforce the requirements of this subsection and the Commission's regulations thereunder. A VOIP service provider may obtain access to such infrastructure pursuant to section 717 by asserting the rights described in such section.

(c) NEW CUSTOMERS.—A VOIP service provider shall make 911 service available to new customers within a reasonable time in accordance with the following requirements:

(1) CONNECTION TO SELECTIVE ROUTER.—For all new customers not within the geographic areas where a VOIP service provider can immediately provide 911 service to the geographically appropriate PSAP, a VOIP service provider, or its third party vendor, shall have no more than 30 days from the date the VOIP provider has acquired a customer to order service providing connectivity to the selective router so that 911 service, or E911 service where the PSAP is capable of receiving and processing such information, can be provided through the selective router.

(2) INTERIM SERVICE.—For all new customers not within the geographic areas where the VOIP service provider can immediately provide 911 service to the geographically appropriate PSAP, a VOIP service provider shall provide 911 service through—

(A) an arrangement mutually agreed to by the VOIP service provider and the PSAP or PSAP governing authority; or

(B) an emergency response center with national call routing capabilities.

Such service shall be provided 24 hours a day from the date a VOIP service provider has acquired a customer until the VOIP service provider can provide 911 service to the geographically appropriate PSAP.

(3) NOTICE.—Before providing service to any new customer not within the geographic areas where the VOIP service provider can immediately provide 911 service to the geographically appropriate PSAP, a VOIP service provider shall provide such customer with clear notice that 911 service will be available only as described in paragraph (2).

(4) RESTRICTION ON ACQUISITION OF NEW CUSTOMERS.—A VOIP service provider may not acquire new customers within a

geographic area served by a selective router if, within 180 days of first acquiring a new customer in the area served by the selective router, the VOIP service provider does not provide 911 service, or E911 service where the PSAP is capable of receiving and processing such information, to the geographically appropriate PSAP for all existing customers served by the selective router.

(5) ENFORCEMENT: NO FIRST WARNINGS.—Paragraph (5) of section 503(b) shall not apply to the assessment of forfeiture penalties for violations of this subsection or the regulations thereunder.

(d) STATE AUTHORITY.—Nothing in this Act or any Commission regulation or order shall prevent the imposition on or collection from a VOIP service provider, of any fee or charge specifically designated or presented as dedicated by a State, political subdivision thereof, or Indian tribe on an equitable, and non-discriminatory basis for the support of 911 and E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 and E–911 services or enhancements of such services.

(e) FEASIBILITY.—In establishing requirements or obligations under subsections (a) and (b), the Commission shall ensure that such standards impose requirements or obligations on VOIP service providers and entities with ownership or control of necessary E–911 infrastructure that the Commission determines are technologically and operationally feasible. In determining the requirements and obligations that are technologically and operationally feasible, the Commission shall take into consideration available industry technological and operational standards.

(f) PROGRESS REPORTS.—To the extent that the Commission concludes that it is not technologically or operationally feasible for VOIP service providers to comply with E–911 requirements or obligations, then the Commission shall submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the progress in attaining and deploying E–911 service. Such reports shall be submitted semiannually until the Commission concludes that it is technologically and operationally feasible for all VOIP service providers to comply with E–911 requirements and obligations. Such reports may include any recommendations the Commission considers appropriate to encourage the migration of emergency services to TCP/IP protocol or other advanced services.

(g) ACCESS TO INFORMATION.—The Commission shall have the authority to compile a list of PSAP contact information, testing procedures, and classes and types of services supported by PSAPs, or other information concerning the necessary E–911 infrastructure, for the purpose of assisting providers in complying with the requirements of this section.

(h) EMERGENCY ROUTING NUMBER ADMINISTRATOR.—Within 30 days after the date of enactment of this section, the Federal Communications Commission shall establish an emergency routing number administrator to enable VOIP service providers to acquire non-dialable pseudo-automatic number identification numbers for 9–1–1 routing purposes on a national scale. The Commission may adopt

such rules and practices as are necessary to guide such administrator in the fair and expeditious assignment of these numbers.

(i) EMERGENCY RESPONSE SYSTEMS.—

(1) NOTICE PRIOR TO INSTALLATION OR NUMBER ACTIVATION OF VOIP SERVICE.—Prior to installation or number activation of VOIP service for a customer, a VOIP service provider shall provide clear and conspicuous notice to the customer that—

(A) such customer should arrange with his or her emergency response system provider, if any, to test such system after installation;

(B) such customer should notify his or her emergency response system provider after VOIP service is installed; and

(C) a battery backup is required for customer premises equipment installed in connection with the VOIP service in order for the signaling of such system to function in the event of a power outage.

(2) DEFINITION.—In this subsection:

(A) The term "emergency response system" means an alarm or security system, or personal security or medical monitoring system, that is connected to an emergency response center by means of a telecommunications carrier or VOIP service provider.

(B) The term "emergency response center" means an entity that monitors transmissions from an emergency response system.

(j) MIGRATION TO IP-ENABLED EMERGENCY NETWORK.—

(1) NATIONAL REPORT.—No more than 18 months after the date of the enactment of this section, the National 911 Implementation and Coordination Office shall develop a report to Congress on migrating to a national IP-enabled emergency network capable of receiving and responding to all citizen activated emergency communications.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall—

(A) outline the potential benefits of such a migration;

(B) identify barriers that must be overcome and funding mechanisms to address those barriers;

(C) include a proposed timetable, an outline of costs and potential savings;

(D) provide recommendations on specific legislative language,

(E) provide recommendations on any legislative changes, including updating definitions, to facilitate a national IP-enabled emergency network; and

(F) assess, collect, and analyze the experiences of the PSAPs and related public safety authorities who are conducting trial deployments of IP-enabled emergency networks as of the date of enactment of this section.

(3) CONSULTATION.—In developing the report required by paragraph (1), the Office shall consult with representatives of the public safety community, technology and telecommunications providers, and others it deems appropriate.

(k) IMPLEMENTATION.—

(1) DEADLINE.—The Commission shall prescribe regulations to implement this section within 120 days after the date of enactment of this section.

(2) LIMITATION.—Nothing in this section shall be construed to permit the Commission to issue regulations that require or impose a specific technology or technological standard.

(l) DEFINITIONS.—For purposes of this section:

(1) VOIP SERVICE.—The term "VOIP service" means a service that—

(A) provides real-time 2-way voice communications transmitted through customer premises equipment using TCP/IP protocol, or a successor protocol (including when the voice communication is converted to or from TCP/IP protocol by the VOIP service provider and transmitted to the subscriber without use of circuit switching), for a fee;

(B) is offered to the public, or such classes of users as to be effectively available to the public (whether part of a bundle of services or separately); and

(C) has the capability so that the service can originate traffic to, and terminate traffic from, the public switched telephone network.

(2) VOIP SERVICE PROVIDER.—The term "VOIP service provider" means any person who provides or offers to provide a VOIP service.

(3) NECESSARY E–911 INFRASTRUCTURE.—The term "necessary E–911 infrastructure" means the selective routers, selective router databases, automatic location information databases, master street address guides, trunk lines between selective routers and PSAPs, trunk lines between automatic location information databases and PSAPs, and other 911 and E–911 equipment, facilities, databases, interfaces, and related capabilities specified by the Commission.

(4) NON-DIALABLE PSEUDO-AUTOMATIC NUMBER IDENTIFICATION NUMBER.—The term "non-dialable pseudo-automatic number identification number" means a number, consisting of the same number of digits as numbers used for automatic number identification, that is not a North American Numbering Plan telephone directory number and that may be used in place of an automatic number identification number to convey special meaning. The special meaning assigned to the non-dialable pseudo-automatic number identification number is determined by nationally standard agreements, or by individual agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

SEC. 717. RIGHTS AND OBLIGATIONS OF VOIP SERVICE PROVIDERS.

(a) IN GENERAL.—

(1) FACILITIES-BASED VOIP SERVICE PROVIDERS.—A facilities-based VOIP service provider shall have the same rights, duties, and obligations as a requesting telecommunications carrier under sections 251 and 252, if the provider elects to assert such rights.

(2) VOIP SERVICE PROVIDERS.—A VOIP service provider that is not a facilities-based VOIP service provider shall have only the same rights, duties, and obligations as a requesting tele-

communications carrier under sections 251(b), 251(e), and 252, if the provider elects to assert such rights.

(3) CLARIFYING TREATMENT OF VOIP SERVICE.—A telecommunications carrier may use interconnection, services, and network elements obtained pursuant to sections 251 and 252 from an incumbent local exchange carrier (as such term is defined in section 251(h)) to exchange VOIP service traffic with such incumbent local exchange carrier regardless of the provider originating such VOIP service traffic, including an affiliate of such telecommunications carrier.

(b) DISABLED ACCESS.—A VOIP service provider or a manufacturer of VOIP service equipment shall have the same rights, duties, and obligations as a telecommunications carrier or telecommunications equipment manufacturer, respectively, under sections 225, 255, and 710 of the Act. Within 1 year after the date of enactment of this Act, the Commission, in consultation with the Architectural and Transportation Barriers Compliance Board, shall prescribe such regulations as are necessary to implement this section. In implementing this subsection, the Commission shall consider whether a VOIP service provider or manufacturer of VOIP service equipment primarily markets such service or equipment as a substitute for telecommunications service, telecommunications equipment, customer premises equipment, or telecommunications relay services.

(c) DEFINITIONS.—For purposes of this section:

(1) FACILITIES-BASED VOIP SERVICE PROVIDER.—The term "facilities-based VOIP service provider" means an entity that provides VOIP service over a physical facility that terminates at the end user's location and which such entity or an affiliate owns or over which such entity or affiliate has exclusive use. An entity or affiliate shall be considered a facilities-based VOIP service provider only in those geographic areas where such terminating physical facilities are located.

(2) VOIP SERVICE PROVIDER; VOIP SERVICE.—The terms "VOIP service provider" and "VOIP service" have the meanings given such terms by section 716(j).

SEC. 718. STAND-ALONE BROADBAND SERVICE.

(a) PROHIBITION.—A broadband service provider shall not require a subscriber, as a condition on the purchase of any broadband service the provider offers, to purchase any cable service, telecommunications service, or VOIP service offered by the provider.

(b) DEFINITIONS.—In this section:

(1) The term "broadband service" means a two-way transmission service that connects to the Internet and transmits information at an average rate of at least 200 kilobits per second in at least one direction.

(2) The term "broadband service provider" means a person or entity that controls, operates, or resells and controls any facility used to provide broadband service to the public, by whatever technology and whether provided for a fee, in exchange for an explicit benefit, or for free.

(3) The term "VOIP service" has the meaning given such term by section 716(j).

DISSENTING VIEWS OF REPRESENTATIVES JOHN D. DINGELL, HENRY A. WAXMAN, EDWARD J. MARKEY, ANNA G. ESHOO, LOIS CAPPS, MICHAEL F. DOYLE, JAN SCHAKOWSKY, HILDA L. SOLIS, AND TAMMY BALDWIN

We oppose H.R. 5252, the "Communications Opportunity, Promotion, and Enhancement Act of 2006", (COPE Act) as reported. While some consumers may see more cable and broadband competition from this bill, far too many will be worse off after the bill than they are today. This reality cannot be ignored, so we cannot support the legislation.

The COPE Act represents a dramatic departure from historic communications policy goals of universal service, localism, and diversity. It abandons universal service in a way that will result in higher cable rates for certain customers, shoddy service quality, or outright withdrawal of cable service. It undermines localism in the delivery of cable service and resolution of disputes. It overturns a decade of forward-thinking policies fostering broadband networks and a hands-off treatment of the Internet by blessing the broadband designs of network operators at the expense of innovators, entrepreneurs, and individual citizens.

In short, this bill is bad for consumers, bad for communities, and bad for citizens of the Internet. We offered amendments that would have addressed several shortcomings, yet those amendments were defeated, mostly along party lines. Without curing the bill's many infirmities, we remain concerned that this bill does consumers and Internet users more harm than good.

THE BILL OVERTURNS LONGSTANDING CABLE UNIVERSAL SERVICE REQUIREMENTS

Supporters of the bill tout its potential to accelerate competition to cable, a worthy goal. But the competition they envision will not extend to all consumers in all parts of town. New wireline competitors to cable may very well result in lower prices and better services for residents of the areas facing head-to-head competition, but everyone else may be worse off. As explained below, people living in areas bypassed by the competition could see higher prices, diminished quality of service, and deteriorating facilities, and be foreclosed from the innovative features and services yet to come.

The bill grants new cable operators access to a community's public rights-of-way without any obligation to serve the entire community. All national franchisees, including new entrants and incumbent cable operators, will be able to select the most lucrative households to serve while ignoring others. This is a reversal of decades of Congressional policies designed to ensure universal service to communications services. If there is value in the universal availability of cable service, then this value will be lost.

Currently, cable operators must offer their services throughout entire franchise areas. Commonly referred to as a "buildout" requirement, this universal service principle is a recognition that as part and parcel of using the public rights-of-way, cable operators must extend service to all the public. The Communications Act specifies that a local franchising authority must allow a reasonable period of time for a cable operator to become capable of providing cable service to all households in the franchise area. The COPE Act eliminates this requirement—not just for new entrants, but for incumbent cable operators once a new entrant has offered service anywhere in the franchise area.

Several consequences flow from eliminating a buildout requirement on incumbent operators and allowing new entrants to cherry pick their customers. At a hearing on the bill in the Subcommittee on Telecommunications and the Internet, a cable industry representative testified that the industry could not pledge (1) they would not withdraw service in certain areas, (2) they would not target service upgrades only to competitive neighborhoods, or (3) they would not increase rates in some areas to subsidize lower rates in competitive areas.

First, some consumers could actually lose cable service altogether. Once cable companies switch to a national franchise, they can choose not to continue serving all of the households they currently are required to serve. Without a buildout requirement, those abandoned customers have little recourse to complain about the withdrawal of their service. For those who believe that cable operators with facilities already in the ground are unlikely to withdraw service, can we be confident that is the case in areas like the Ninth Ward of New Orleans following a hurricane or other areas where disaster strikes? There may be other areas where, in order to focus on competing in other areas, the incumbent operator may choose to stop serving outlying parts of the franchise area, or sell off systems to a smaller operator with more limited means of obtaining programming. If this bill were to pass in its current form, those residents may lose their only provider of cable service. That would represent a radical departure from this Committee's commitment to universal service.

Second, even if service is not withdrawn, the bill lets operators avoid maintaining or upgrading facilities in certain neighborhoods, which could result in differing levels of service depending on the demographics of a neighborhood. Some parts of town may receive high-quality, cutting edge services as families across town see their service and facilities deteriorate. Although the incumbent's cable system has already been built, the system will require upgrades, maintenance, and expansion, particularly where population growth occurs. Removing the universal service requirement may mean that it is no longer profitable for an incumbent cable operator to incur the costs of upgrading service in the areas not facing competition, as it deploys more resources into competitive areas. The lack of equitable upgrades of cable facilities has sparked consumer backlash in the past, and will likely do so again.

Third, many consumers could face higher cable rates as a result of this legislation. When a national franchisee enters only part of an incumbent cable operator's franchise area, the incumbent may

respond by lowering prices in that area. To offset this reduction, the cable operator may decide to charge a higher price in the parts of the franchise area where there is no new entry. In that case, the very consumers that do not share in the cable competition will see their cable rates increase. We should give careful consideration to any measure that promises to lower cable rates for some, but increases cable rates for others.

As reported, the bill will create the digital equivalent of gated communities in our cities, towns, and countryside. To correct this injustice, Democrats unsuccessfully sought to amend the bill with a carefully constructed, market-based, buildout amendment. The amendment was based on the simple premise in communications policy that in return for public rights-of-way privileges in a community, all of the public should benefit. Maintaining a buildout obligation would prevent cable operators from engaging in discriminatory behavior and go a long way toward ensuring that all consumers are able to choose from competing cable operators.

The amendment would have required a phased-in buildout approach within a franchise area. The buildout requirement was market-based, applying only if a provider's business plan is successful. It was also incremental, requiring buildout over time. Finally, it was flexible, allowing operators to meet obligations in rural and high cost areas using any comparable alternative technology, such as wireless.

The Democratic buildout amendment would benefit consumers by:

(1) Guarding against economic discrimination through the maintenance of universal service principles and prevention of permanent cherry picking by new entrants.

(2) Creating market-based incremental service requirements for national franchisees in exchange for their use of the public rights-of-way in a manner which would not overburden new entrants in their initial deployment of service and would account for small startup providers.

(3) Creating a level playing field for new entrants by complementing the incumbent cable operator's current requirement to serve the entire franchise area.

(4) Closing the digital divide by ensuring that all consumers benefit from the use of the public rights-of-way and eventually gain access to competitive service providers.

(5) Protecting consumers from operators failing to upgrade or equitably serve portions of the franchise area given that the new competitor will eventually extend comparable service to those areas.

(6) Mitigating against operators charging selective higher prices to different parts of a franchise area in view of the fact that competition will eventually extend throughout the franchise area.

A buildout requirement is not a mere vestige of a bygone monopoly era. Like other franchise requirements, a buildout obligation is part of the pact with the public over the use of public rights-of-way. It is grounded in the use of the public's property, and not in the provision of a monopoly service. In fact, current law prevents localities from granting exclusive cable franchises. Even the Federal Government, when it turns over the public's property rights

through spectrum licenses, has traditionally imposed buildout and other requirements on private companies that gain the right to use government property for their own commercial interests. For example, in wireless service, the Federal Government imposed construction and buildout requirements to foster ubiquitous deployment of service, particularly to rural areas.

Universal service requirements, which are not unique to the cable industry, are grounded in equitable considerations, economic development, and even economic efficiencies in networked industries. Even though the amendment would have imposed a buildout requirement on new entrants five years after their entry into the marketplace, in the end all potential customers in the franchise area would have had the ability to share in the competitive cable service. This Committee has long sought to ensure universal availability of cutting edge communications infrastructure and services throughout the nation. We are not prepared to jettison that principle.

THE BILL IMPOSES A WEAK REDLINING PROTECTION

As a general matter, reliance upon an after-the-fact redlining complaint process where the onus is on aggrieved households to prove outright economic discrimination is a less-than-satisfactory replacement for a principle of fairness that has served our country well for decades. But if the COPE Act is going to abandon the requirement in current law for cable operators to offer service throughout an entire franchise area, then the bill needs a strong anti-discrimination provision to assure that services are made available equitably across all our communities. Unfortunately, as drafted, the bill contains a provision that purports to prevent discrimination, but it is weak and may prove ineffective. Several Democratic amendments that sought to strengthen the anti-redlining protections were defeated, largely along party lines.

The failure to provide a communications service, or the offering of inferior service, to a certain neighborhood or community through redlining undercuts economic development and could imperil the ability of those communities to participate in the information age.

Numerous parties, in letters and testimony before the Committee, supported strengthening the anti-discrimination provision. According to a joint filing in the Federal Communications Commission's (FCC) local franchising proceeding by 34 organizations,[1] a credible anti-redlining regulatory program should perform the fol-

[1] Minority Media and Telecommunications Council; Advancement Project; American Federation of Television and Radio Artists (AFTRA); American Indians in Film and Television; Asian American Justice Center; Asian Law Caucus; Black College Communication Association; Center for Asian American Media; Fairness and Accuracy in Reporting; Hispanic Americans for Fairness in Media; Labor Council for Latin American Advancement; Lawyers' Committee for Civil Rights; League of United Latin American Citizens; Minority Business Enterprise Legal Defense and Education Fund; National Association for Multi-Ethnicity in Communications; National Association of Black Journalists; National Association of Black Owned Broadcasters; National Association of Black Telecommunications Professionals; National Association of Hispanic Journalists; National Association of Hispanics in Information Technology and Telecommunications; National Association of Latino Independent Producers; National Bar Association; National Coalition of Hispanic Organizations; National Council of Churches; National Indian Telecommunications Institute; National Institute for Latino Policy; National Puerto Rican Coalition; Native American Public Telecommunications; Office of Communication of the United Church of Christ; Puerto Rican Legal Defense and Education Fund; Rainbow/PUSH Coalition; The Links; Women's Institute for Freedom of the Press.

lowing functions: (1) specify what constitutes discrimination (e.g., discrimination based on race, household wealth, age and condition of the physical plant, genders of heads of households, rental or home ownership status, local crime rates, supposed creditworthiness, or the cost of obtaining and maintaining insurance in a particular area); (2) define specifically, and in terms understandable to lay people, what constitutes redlining and what services are covered by this definition (e.g., promotional campaigns, responsiveness to service and repair calls, and locations of neighborhood sales and bill-paying offices); (3) apply an impact standard rather than an intent standard; (4) specify who decides when redlining has occurred; (5) specify the evidence needed to compel a hearing or trial to determine whether redlining has occurred in a specific community; (6) broadly afford standing to complain and explain how parties may demonstrate standing; (7) provide meaningful, prompt and enforceable remedies and relief; (8) prohibit mandatory arbitration and provide individuals with other fora in which to adjudicate complaints alleging redlining in the provision of communications services; (9) establish an accessible venue for appellate review; (10) provide for the applicability of the Civil Rights Attorneys Fees Act of 1976 or other provisions to encourage the private bar to assume the risks attendant to bringing these cases; (11) afford a new entrant a means of obtaining pre-clearance of its buildout plans, with such pre-clearance establishing a rebuttable presumption that the company will not redline; and (12) perhaps allow a new entrant (and the incumbent) to choose among regulatory options, such that the fulfillment of the chosen option would be sufficient to allow for buildout to commence without delay while the granular details of anti-redlining reporting are being finalized.

When compared against these criteria, the bill's anti-redlining provision does not measure up. The bill prohibits denial of access to cable service on the basis of income within a franchise area and imposes heavy fines for proven violations. Yet, in practice, the provision does little to assure that discrimination will not take place. Among some of its most glaring deficiencies: First, the provision prohibits only income-based denials of service, potentially leaving unanswered discrimination on the basis of race, color, religion, national origin, sex and other factors. Second, it only addresses denial of access, which, depending on how it will be interpreted, potentially leaves companies able to provide inferior service, unequal upgrades, and less timely repairs. Third, it requires the FCC, with little experience in civil rights issues, not localities, to handle all complaints, and then requires confidential treatment of the investigative materials. Fourth, it appears to require proof of discriminatory intent, rather than the impact standard of traditional civil rights laws. Fifth, even if a violation is proven, it offers no assurance of how quickly the affected consumers will be served beyond an unspecified "reasonable" time.

Several Democratic amendments sought to strengthen the protections against redlining and were defeated. An amendment offered by Rep. Solis would have expanded the prohibited bases of discrimination beyond income to address denial of access on the basis of race, color, religion, national origin, or sex. An amendment offered by Rep. Waxman would have added to the scope of prohibited

discrimination by addressing the offering of inferior access, not just denial of access. Consistent with traditional civil rights enforcement, that amendment also would have clarified that the prohibition extends to the offering of service in a manner that has the purpose or effect of discriminating against a group on the basis of income. An amendment offered by Rep. Baldwin would have given the local franchising authorities with knowledge of the affected geographic areas the responsibility to determine first whether income-based discrimination had occurred, with an appeal to the FCC. These amendments would have gone a long way toward strengthening the bill's anti-discrimination provision so that it could achieve its intended purposes and adequately protect the public. Without them, there is little assurance of equitable deployment of cable service from national franchisees.

THE BILL SHIFTS TOO MUCH LOCAL CONTROL TO THE FCC

The COPE Act undermines the ability of local governments to protect consumers, enforce local matters, and effectively manage the public rights-of-way.

The bill could be read to make the FCC the final arbiter of local rights-of-way disputes. While purporting to preserve municipal authority over rights-of-way matters, the bill overreaches and imposes a new "reasonableness" requirement over municipal regulation that, depending on how it will be interpreted, could leave communities having to defend the exercise of their municipal rights-of-way authority at the FCC in Washington, DC.

We believe strongly that incidents occurring in local rights-of-way are public safety concerns better addressed locally and immediately. The FCC, with no expertise concerning local streets, sidewalks, public safety, or traffic patterns, should not be regulating and second-guessing all local rights-of-way practices and disputes without regard to whether those practices concern run-of-the-mill daily disputes or rise to the level of constituting an overall barrier to entry.

Even beyond rights-of-way issues, the bill shifts too much responsibility to the FCC to handle the flood of cable complaints and requests for resolution of local disputes that may result. Although the bill enables local franchising authorities to enforce the consumer protection requirements and customer service standards, it does not specifically allow the franchising authorities to resolve other types of local disputes that may arise. For example, disputes over the carriage, quality, or interconnection of public, educational, and governmental access channels would seemingly have to be resolved in Washington at the FCC rather than locally.

An amendment offered by Rep. Dingell addressed several local governance matters, and was defeated on a largely party-line vote. First, the amendment would have preserved the status quo concerning the enforcement of municipal rights-of-way disputes by clarifying that the bill was not intended to grant authority to the FCC over enforcement of local rights-of-way matters. Second, the amendment would have required a national franchisee to certify that it will comply with municipal rights-of-way requirements as part of its national franchise certification. Third, the amendment sought to reduce anticipated ambiguity in the "gross revenues" def-

inition and preserve the ability for cities to recover franchise fees on revenue from integrated features, functions and capabilities of video programming. Fourth, recognizing that disputes between a locality and a cable operator over the amount of franchise and other fees may be inevitable, the amendment would have established a dispute resolution process for monetary disputes that would have encouraged parties to meet and settle their differences before filing a complaint at the FCC. Fifth, the amendment required the FCC, within the time frame outlined in the bill, to consult with and draw upon the expertise of franchising authorities when it establishes the rules and policies necessary to implement the national franchise.

An amendment by Rep. Doyle would have strengthened the overall enforcement of the national franchise by allowing local resolution of complaints in conjunction with the FCC. It would have clarified that, although the requirements of the national franchise would be established federally, the local franchising authorities would be given authority to enforce compliance with all Federal standards. Consumers, public access channel administrators, or anyone else with a complaint regarding the requirements of the national franchise would have been able to go before their local franchising authority for initial resolution of complaints, which would then be appealable to the FCC. The amendment was defeated, largely on a party-line vote.

THE BILL FAILS TO PRESERVE THE FREE, OPEN AND INNOVATIVE INTERNET

BACKGROUND

The Internet was born out of taxpayer-funded projects starting in the 1960's. The pioneering use of "packet-switching," as opposed to traditional circuit-switching, also underscored a key founding feature of the nascent Internet, namely, that of open architecture networking. As an open architecture network, packets could traverse various independent networks from various providers to reach their destinations. In short, this meant that the Internet itself was not "owned" by anyone.

In 1991, the U.S. Government decided to take this Federal network and permit its commercialization. The astounding growth of the Internet since that time is a tribute to the fact that its open architecture permitted individuals to innovate, invest, exchange ideas, and traffic on a nondiscriminatory basis. This, in turn, fostered yet greater expansion of the Internet.

From 1991 to August of 2005, the Internet's nondiscriminatory nature was also protected from being compromised by historic communications laws that required such nondiscriminatory treatment by telecommunications carriers. In other words, no commercial telecommunications carrier could engage in discriminatory conduct regarding Internet traffic and Internet access because it was prohibited by law. The Telecommunications Act of 1996, by removing barriers to greater competition, induced the rapid introduction of broadband service across the country, with a concomitant growth in Internet access and activity.

These broadband networks have become the lifeblood of our digital economy. They also hold the promise of promoting further innovation in and creation of new markets and technologies, applications and services, jobs, and furthering the widespread dissemination of educational, civic, and cultural information across communities and societies. The worldwide leadership that the U.S. provides in high technology is directly related to the government-driven policies over decades which have ensured that telecommunications networks are open to all lawful uses and all users. The Internet, which is accessible every day to more and more Americans on such broadband networks, was also founded upon an open architecture protocol and as a result it has provided low barriers to entry for that unleashed, explosive growth of web-based content, applications, and services.

In August of 2005, however, the Federal Communications Commission re-classified broadband access to the Internet in a way that removed such legal protections. It did not take long for the telecommunications carriers to respond to that decision. Just a few months later, the Chairman of then-SBC Communications made the following statement in a November 7 Business Week interview: "Now what they [Google, Yahoo, MSN] would like to do is use my pipes free, but I ain't going to let them do that because we have spent this capital and we have to have a return on it. So there's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using. * * *"

In a December 1, 2005, Washington Post article, a BellSouth executive indicated that his company wanted to strike deals to give certain Web sites priority treatment in reaching computer users. The article noted this would "significantly change how the Internet operates" and that the BellSouth executive said "his company should be allowed to charge a rival voice-over-Internet firm so that its service can operate with the same quality as BellSouth's offering." Meaning, that if the rival firm did not pay, or was not permitted to pay for competitive reasons, its service presumably would not "operate with the same quality" as BellSouth's own product.

Finally, on January 6, 2006, the CEO of Verizon, in an address to the Consumer Electronics Show, also indicated that Verizon would now be the corporate arbiter of how traffic would be treated when he said the following: "We have to make sure [content providers] don't sit on our network and chew up our capacity."

The corrosion of historic policies of nondiscrimination by the imposition of artificial bottlenecks by broadband network owners endangers economic growth, innovation, job creation, and First Amendment freedom of expression on such networks. Broadband network owners should not be able to determine who can and who cannot offer services over broadband networks or over the Internet. The detrimental effect to the digital economy would be quite severe if such conduct were permitted and became widespread. The COPE Act permits such conduct and as a result, puts the Internet in jeopardy.

FLAWED PROVISIONS IN THE COPE ACT

In response to this threat to the open, nondiscriminatory nature of the Internet, the COPE Act, as reported, contains in Title II a

purported "network neutrality" provision. This provision permits the FCC to enforce its so-called "broadband policy statement." That policy statement, however, is a broadly-worded, imprecise statement of "feel-good" rhetoric intended to guide future agency decision-making but not, as the FCC Chairman indicated, to result in any enforceable protections or specific behavior requirements. It was not adopted subject to the thoroughness of the Administrative Procedures Act's (APA) notice-and-comment process. It was not adopted with any notion of enforcement attached to it. In essence, the COPE Act requires the FCC to enforce something that is of highly dubious enforceability.

For instance, the policy statement does not define broadband service. It does not indicate whether it covers wireless services, asynchronous satellite-delivered broadband services, or narrow bandwidth services. In addition, as an example of the vague nature of the FCC's statement, the "4th principle" reads as follows: "Consumers are entitled to competition among network providers, application and service providers, and content providers." How does the FCC enforce that? How can an entity be justly found in violation of that? Competition across all markets is a noble aspiration, but can the lack of it legitimately lead to FCC fines? Simply directing the FCC to enforce this statement may prove unworkable.

Compounding this error, the COPE Act explicitly bars the FCC from actually turning its policy statement into more effective rules. We do not recall other legislation approved by this Committee that proposed to statutorily tie the hands of the expert agency in order to prevent it from doing its job consistent with its historic practice and the APA.

These are some of the ways in which the COPE Act is wholly deficient in substantively protecting the Internet. The principle of non-discrimination is not encompassed explicitly in the FCC's policy statement and the bill contains no directive on it. The COPE Act fails to address in any way the stated aims of the telephone industry to begin instituting a broadband tax on web-based businesses. It contains no provision addressing the discriminatory prioritization of data through networks. It effectively condones this practice as well as the discriminatory charging, or withholding, of "quality of service" functionality and management by broadband network owners.

THE NETWORK NEUTRALITY AMENDMENT

In the Subcommittee and Committee markups, a network neutrality amendment was offered by Representatives Markey, Boucher, Eshoo, and Inslee, to remedy these many deficiencies in the COPE Act's approach to network neutrality. The amendment stated clear, substantive, and explicit statutory protections for consumers and Internet-based entities. It articulated clear, reasonable exceptions to address network security, emergency communications, parental controls, and other consumer-protection measures. And it contained an expedited enforcement provision to ensure speedy resolution of complaints.

At its heart, the amendment preserved the Internet as we today know it. It told broadband behemoths to keep their hands off the Net. And without its inclusion, the COPE Act blesses the

broadband designs of a small handful of large corporations over the aspirations of thousands of smaller companies, entrepreneurs, innovators, and individual citizens. The network neutrality amendment must be added to this bill.

CONCLUSION

We support the goal of having a national cable franchise structure in an effort to spur cable competition and bring consumers the promise of choosing among competing providers for video, voice, and data. But the COPE Act as reported will not fulfill that promise. It risks harming many consumers by removing protections that they have today. Why should some consumers lose their current cable service, be forced to pay higher prices, or receive worse service so that other consumers can receive more cable choice? This result is unwise and contrary to decades of telecommunications policies designed to ensure that everyone has access to cutting-edge communications service. Consumers and Internet users will also be harmed by the injection of private taxation onto the Internet, and the allowance of discriminatory treatment and interference by network operators. The free, open, and innovative Internet has flourished under network neutrality legal protections until last year. We are not prepared to turn over control of the free flow of the Internet to the whims of cable and telephone companies without stronger and better protections to ensure the continued innovation, entrepreneurialism, and freedom that has marked the most powerful communications tool we have ever seen.

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