

[STAFF WORKING DRAFT]

MAY 1, 2006

109TH CONGRESS
2ND SESSION

S. _____

To amend the Communications Act of 1934 and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY —, 2006

Mr. _____ (for himself, Mr. _____, and Mr. _____
) introduced the following bill; which was read twice and referred to the
Committee on _____

A BILL

To amend the Communications Act of 1934 and for other
purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Communications, Con-
5 sumer’s Choice, and Broadband Deployment Act of
6 2006”.

1 **SEC. 2. AMENDMENT OF COMMUNICATIONS ACT OF 1934.**

2 Except as otherwise expressly provided, whenever in
3 this title an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion, the reference shall be considered to be made to a
6 section or other provision of the Communications Act of
7 1934 (47 U.S.C. 151 et seq.).

8 **SEC. 3. TABLE OF CONTENTS.**

9 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Amendment of Communications Act of 1934.
- Sec. 3. Table of contents.

TITLE I—WAR ON TERRORISM

SUBTITLE A—CALL HOME

- Sec. 103. Telephone rates for members of armed forces deployed abroad.
- Sec. 102. Repeal of existing authorization.

SUBTITLE B—INTEROPERABILITY

- Sec. 151. Interoperable emergency communications.

TITLE II—UNIVERSAL SERVICE REFORM; INTERCONNECTION

- Sec. 201. Short title.

SUBTITLE A—CONTRIBUTIONS TO UNIVERSAL SERVICE

- Sec. 211. Stabilization of universal service funding.
- Sec. 212. Telecommunications services for libraries.
- Sec. 213. Modification of rural video service exemption.
- Sec. 214. Interconnection.

SUBTITLE B—DISTRIBUTIONS FROM UNIVERSAL SERVICE

- Sec. 251. Broadband requirement.
- Sec. 252. Establishment of broadband account within universal service fund.
- Sec. 253. Eligible telecommunications carrier guidelines.
- Sec. 254. Primary line.
- Sec. 255. Phantom traffic.
- Sec. 256. Random audits.
- Sec. 257. Waste, fraud, and abuse.

TITLE III—STREAMLINING FRANCHISING PROCESS

- Sec. 301. Short title.

SUBTITLE A—UPDATING THE 1934 ACT AND LEVELING THE REGULATORY
PLAYING FIELD

- Sec. 311. Application of title VI to video services and video service providers.
- Sec. 312. Purpose; franchise applications; scope.
- Sec. 313. Standard franchise application form.
- Sec. 314. Definitions.

SUBTITLE B—STREAMLINING THE PROVISION OF VIDEO SERVICES

- Sec. 331. Franchise requirements and related provisions.
- Sec. 332. Renewal; revocation.
- Sec. 333. PEG and institutional network obligations.
- Sec. 334. Services, facilities, and equipment.
- Sec. 337. Shared facilities.
- Sec. 338. Consumer protection and customer service.
- Sec. 339. Redlining.

SUBTITLE C—MISCELLANEOUS AND CONFORMING AMENDMENTS

- Sec. 351. Miscellaneous amendments.

SUBTITLE D—EFFECTIVE DATES AND TRANSITION RULES.

- Sec. 381. Effective dates; phase-in.

TITLE IV—VIDEO CONTENT

- Sec. 401. Short title.

SUBTITLE A—SPORTS FREEDOM

- Sec. 401. Short title.
- Sec. 402. Development of competition and diversity in video programming distribution.
- Sec. 403. Regulations.

SUBTITLE B—NATIONAL SATELLITE

- Sec. 431. Availability of certain licensed services in noncontiguous States.

SUBTITLE C—VIDEO AND AUDIO FLAG

- Sec. 451. Short title.
- Sec. 452. Digital video broadcasting.
- Sec. 453. Digital audio broadcasting.
- Sec. 454. Digital Audio Review Board.

TITLE V—MUNICIPAL BROADBAND

- Sec. 501. Short title.
- Sec. 502. State regulation of municipal broadband networks.

TITLE VI—WIRELESS INNOVATION NETWORKS

- Sec. 601. Short title.
- Sec. 602. Eligible television spectrum made available for wireless use.

TITLE VII—DIGITAL TELEVISION

Sec. 701. Analog and digital television sets and converter boxes; consumer education and requirements to reduce the government cost of the converter box program.

Sec. 702. Digital stream requirement for the blind.

Sec. 703. Status of international coordination.

TITLE VIII—PROTECTING CHILDREN

Sec. 801. Video transmission of child pornography.

TITLE IX—INTERNET NEUTRALITY

Sec. 901. Neutral networks for consumers.

TITLE X—MISCELLANEOUS

Sec. 1001. Commissioner participation in forums and meetings.

Sec. 1002. Severability.

1 **TITLE I—WAR ON TERRORISM**

2 **Subtitle A—Call Home**

3 **SEC. 103. TELEPHONE RATES FOR MEMBERS OF ARMED**
4 **FORCES DEPLOYED ABROAD.**

5 (a) IN GENERAL.—The Federal Communications
6 Commission shall take such action as may be necessary
7 to reduce the cost of calling home for Armed Forces per-
8 sonnel who are stationed outside the United States under
9 official military orders or deployed outside the United
10 States in support of military operations, training exer-
11 cises, or other purposes as approved by the Secretary of
12 Defense, including the reduction of such costs through the
13 waiver of government fees, assessments, or other charges
14 for such calls. The Commission may not regulate rates in
15 order to carry out this section.

16 (b) FACTORS TO CONSIDER.—In taking the action
17 described in subsection (a), the Commission, in coordina-

1 tion with the Department of Defense and the Department
2 of State, shall—

3 (1) evaluate and analyze the costs to Armed
4 Forces personnel of such telephone calls to and from
5 American military bases abroad;

6 (2) evaluate methods of reducing the rates im-
7 posed on such calls, including deployment of new
8 technology such as voice over Internet protocol or
9 other Internet protocol technology;

10 (3) encourage telecommunications carriers (as
11 defined in section 3(44) of the Communications Act
12 of 1934 (47 U.S.C. 153(44))) to adopt flexible bill-
13 ing procedures and policies for Armed Forces per-
14 sonnel and their dependents for telephone calls to
15 and from such Armed Forces personnel; and

16 (4) seek agreements with foreign governments
17 to reduce international surcharges on such telephone
18 calls.

19 (c) DEFINITIONS.—In this section:

20 (1) ARMED FORCES.—The term “Armed
21 Forces” has the meaning given that term by section
22 2101(2) of title 5, United States Code.

23 (2) MILITARY BASE.—The term “military base”
24 includes official duty stations to include vessels,

1 whether such vessels are in port or underway outside
2 of the United States.

3 **SEC. 102. REPEAL OF EXISTING AUTHORIZATION.**

4 Section 213 of the Telecommunications Authorization
5 Act of 1992 (47 U.S.C. 201 note) is repealed.

6 **Subtitle B—Interoperability**

7 **SEC. 151. INTEROPERABLE EMERGENCY COMMUNICA-**
8 **TIONS.**

9 (a) IN GENERAL.—Section 3006 of Public Law 109–
10 171 (47 U.S.C. 309 note) is amended by redesignating
11 subsection (d) as subsection (g) and by inserting after sub-
12 section (c) the following:

13 “(d) INTEROPERABLE COMMUNICATIONS SYSTEM
14 EQUIPMENT DEPLOYMENT.—

15 “(1) IN GENERAL.—The Assistant Secretary
16 shall allocate a portion of the funds made available
17 to carry out this section to make interoperable com-
18 munications system equipment grants for equipment
19 that can utilize reallocated public safety spectrum..

20 “(2) ALLOCATION OF FUNDS.—The Secretary
21 shall allocate the funds as follows:

22 “(A) A portion to be equally distributed to
23 each State.

24 “(B) A majority to be distributed to the
25 States based on the threat and risk factors used

1 by the Secretary of Homeland Security for the
2 purposes of allocating discretionary grants
3 under the heading “OFFICE FOR DOMESTIC
4 PREPAREDNESS, STATE AND LOCAL PRO-
5 GRAMS” in the Department of Homeland Secu-
6 rity Appropriations Act, 2006.

7 “(3) ELIGIBILITY.—A State may not receive
8 funds allocated to it under paragraph (2) unless it
9 has established a statewide interoperable commu-
10 nications plan approved by the Secretary of Home-
11 land Security.

12 “(4) USE OF FUNDS.—A State shall use any
13 funds received under this subsection for the pur-
14 chase of equipment and infrastructure that complies
15 with SAFECOM guidance, including any standards
16 that may be referenced by SAFECOM guidance.

17 “(e) COORDINATION AND PLANNING GRANT INITIA-
18 TIVE.—

19 “(1) IN GENERAL.—The Assistant Secretary, in
20 consultation with the Secretary of Homeland Secu-
21 rity, shall allocate a portion of the funds made avail-
22 able to carry out this section for emergency commu-
23 nication and coordination planning grants. The
24 grants shall supplement, and be in addition to, any

1 Federal funds otherwise made available by grant or
2 otherwise to the States for emergency planning.

3 “(2) ALLOCATION.—The Secretary shall allo-
4 cate funds under this subsection as follows:

5 “(A) A portion shall be equally distributed
6 to each State for use by State and local govern-
7 ments; and

8 “(B) A majority shall be distributed to the
9 States based on the threat and risk factors used
10 by the Secretary of Homeland Security for the
11 purposes of allocating discretionary grants
12 under the heading “OFFICE FOR DOMESTIC
13 PREPAREDNESS, STATE AND LOCAL PRO-
14 GRAMS” in the Department of Homeland Secu-
15 rity Appropriations Act, 2006.

16 “(3) COORDINATION AND PLANNING GUIDE-
17 LINES.—Except as provided in paragraph (4), a
18 State shall use its emergency communication coordi-
19 nation and planning grant to establish a statewide
20 plan consistent with the State communications inter-
21 operability planning methodology developed by the
22 SAFECOM program within the Department of
23 Homeland Security or a regional plan established
24 pursuant to a regional planning agency consistent
25 with this section. In establishing the plan, the Gov-

1 ernor or the Governor’s designee shall consult with
2 the Secretary of Homeland Security or the Sec-
3 retary’s designee. A State shall submit its statewide
4 plan to the Public Safety and Homeland Security
5 Bureau of the Federal Communications Commission
6 for approval and the Secretary of Homeland Secu-
7 rity for approval.

8 “(f) STRATEGIC TECHNOLOGY RESERVES INITIA-
9 TIVE.—

10 “(1) IN GENERAL.—The Assistant Secretary, in
11 consultation with the Secretary of Homeland Secu-
12 rity, shall allocate a portion the funds made avail-
13 able to carry out this section to establish and imple-
14 ment a strategic technology reserve to pre-position
15 or secure communications equipment in advance for
16 immediate deployment in an emergency or major
17 disaster (as defined in section 102(2) of Public Law
18 93-288 (42 U.S.C. 5122)).

19 “(2) REQUIREMENTS AND CHARACTERISTICS.—
20 A reserve established under paragraph (1) shall—

21 “(A) be capable of re-establishing commu-
22 nications when existing infrastructure is dam-
23 aged or destroyed in a major disaster or other
24 event; and

1 “(B) include appropriate current, widely-
2 used equipment, such as Land Mobile Radio
3 Systems, cellular and satellite telephones, Cells
4 On Wheels, Cells On Light Trucks, backup bat-
5 teries, generators, fuel, and computers.

6 “(3) ADDITIONAL CHARACTERISTICS.—Portions
7 of the reserve may be virtual and may include items
8 donated on an in-kind contribution basis.

9 “(4) CONSULTATION.—In developing the re-
10 serve, the Secretary shall seek advice from the Sec-
11 retary of Defense and the Secretary of Homeland
12 Security, as well as from communications providers,
13 first responders, emergency managers, and State,
14 local, and tribal governments.

15 “(5) ALLOCATION AND USE OF FUNDS.—The
16 Secretary shall allocate—

17 “(A) a portion of the reserve’s funds for
18 block grants to States to enable each State to
19 establish a strategic technology reserve within
20 its borders in a secure location to allow imme-
21 diate deployment; and

22 “(B) a portion of the reserve’s funds for
23 regional Federal strategic technology reserves
24 to facilitate any Federal response when nec-
25 essary, to be held in secure locations around the

1 country for immediate deployment to every re-
2 gion of the country including remote areas and
3 noncontiguous States.

4 “(g) COMMON STANDARDS; APPLICATIONS.

5 “(1) COMMON STANDARDS.—In carrying out
6 this section, the Assistant Secretary, in cooperation
7 with the Secretary of Homeland Security shall de-
8 velop and implement common standards to the
9 greatest extent practicable.

10 “(2) APPLICATIONS.—To be eligible for assist-
11 ance under the programs established in this section,
12 each State shall submit an application, at such time,
13 in such form, and containing such information as
14 the Assistant Secretary may require, including—

15 “(A) a detailed explanation of how assist-
16 ance received under the program would be used
17 to improve local communications interoper-
18 ability and ensure interoperability with other
19 appropriate Federal, State, local, tribal, and re-
20 gional agencies in a regional or national emer-
21 gency; and

22 “(B) assurance that the equipment and
23 system would—

24 “(i) not be incompatible with the com-
25 munications architecture developed under

1 section 7303(a)(1)(E) of the Intelligence
2 Reform Act of 2004;

3 “(ii) meet any voluntary consensus
4 standards developed under section
5 7303(a)(1)(D) of that Act; and

6 “(iii) be consistent with the common
7 grant guidance established under section
8 7303(a)(1)(H) of that Act.”.

9 (b) SEAMLESS MOBILITY.—Within 180 days of the
10 enactment of this Act, the Federal Communications Com-
11 mission shall establish a streamlined process to review and
12 approve deployment of multi-mode devices that permit
13 communication across multiple platforms, facilities, or
14 networks notwithstanding any other provision of law.

15 **TITLE II—UNIVERSAL SERVICE**
16 **REFORM; INTERCONNECTION**

17 **SEC. 201. SHORT TITLE.**

18 This title may be cited as the “Internet and Universal
19 Service Act of 2006”.

20 **Subtitle A—Contributions to**
21 **Universal Service**

22 **SEC. 211. STABILIZATION OF UNIVERSAL SERVICE FUND-**
23 **ING.**

24 (a) ENSURING AN EQUITABLE CONTRIBUTION BASE
25 FOR UNIVERSAL SERVICE.—

1 (1) IN GENERAL.—Section 254(d) (47 U.S.C.
2 254(d)) is amended to read as follows:

3 ‘(d) UNIVERSAL SERVICE SUPPORT CONTRIBU-
4 TIONS.—

5 “(1) CONTRIBUTION MECHANISM.—

6 “(A) IN GENERAL.—Each communications
7 service provider shall contribute as provided in
8 this subsection to support universal service.

9 “(B) REQUIREMENTS.—The Commission
10 shall ensure that the contributions required by
11 this subsection are—

12 “(i) applied in a manner that is as
13 competitively and technologically neutral as
14 possible; and

15 “(ii) specific, predictable, and suffi-
16 cient to sustain the funding of networks
17 used to preserve and advance universal
18 service.

19 “(C) ADJUSTMENTS.—The Commission
20 may adjust the contribution for providers for
21 their low volume residential customers.

22 “(2) EXEMPTIONS.—The Commission may ex-
23 empt a communications service provider or any class
24 of communications service providers from the re-
25 quirements of this subsection—

1 “(A) if the services of such a provider are
2 limited to such an extent that the level of its
3 contributions would be de minimis; or

4 “(B) with respect to communications serv-
5 ice provided pursuant to the Commission’s Life-
6 line Assistance Program.

7 “(3) CONTRIBUTION ASSESSMENT FLEXI-
8 BILITY.—

9 “(A) METHODOLOGY.—To achieve the
10 principles in this section, the Commission may
11 base universal service contributions upon—

12 “(i) revenue from communications
13 service;

14 “(ii) working phone numbers or any
15 other identifier protocol or connection to
16 the networks; or

17 “(iii) network capacity.

18 “(B) USE OF MORE THAN 1 METHOD-
19 OLOGY.—If no single methodology employed
20 under subparagraph (A) achieves the principles
21 described in this subsection, the Commission
22 may employ a combination of any such meth-
23 odologies.

24 “(C) REMOVAL OF INTERSTATE/INTRA-
25 STATE DISTINCTION.—For the purpose of uni-

1 versal service contributions, the Commission
2 may assess the interstate, intrastate, or inter-
3 national portions of communications service.

4 “(D) GROUP PLAN DISCOUNT.—If the
5 Commission utilizes a methodology under sub-
6 paragraph (A) based in whole or in part on
7 working phone numbers, it may provide a dis-
8 count for up to 3 additional phones provided
9 under a group or family pricing plan.

10 “(E) PRESERVATION OF UNIVERSAL SERV-
11 ICE FUNDS.—Nothing in this subsection pre-
12 cludes a State from establishing or maintaining
13 State universal service pursuant to subsection
14 (f).

15 “(4) NON-DISCRIMINATORY ELIGIBILITY RE-
16 QUIREMENT.—A communications service provider is
17 not exempted from the requirements of this sub-
18 section solely on the basis that such provider is not
19 eligible to receive support under this section.

20 “(6) BILLING.—

21 “(A) IN GENERAL.—A communications
22 service provider that contributes to universal
23 service under this section may place on any cus-
24 tomer bill a separate line item charge that does
25 not exceed the amount for the customer that

1 the provider is required to contribute under this
2 subsection that shall be identified as the ‘Fed-
3 eral Universal Service Fee’.

4 “(B) LIMITATION.—If such a provider bills
5 customers for administrative costs associated
6 with its collection and remission of universal
7 service fees under this subsection—

8 “(i) the administrative costs shall be a
9 separate line item charge on the bill and
10 shall be identified as ‘Optional Company
11 Administrative Fee’; and

12 “(ii) the amount billed for such costs
13 may not exceed the estimated direct costs
14 attributable to such administrative costs.

15 “(7) DEFINITIONS.—In this subsection:

16 “(A) BROADBAND SERVICE.—The term
17 ‘broadband service’ means any service used for
18 transmission of information of a user’s choosing
19 with a transmission speed of at least 200 kilo-
20 bits per second in at least 1 direction, regard-
21 less of the transmission medium or technology
22 employed, that connects to the public Internet
23 for a fee directly—

24 “(i) to the public; or

1 “(ii) to such classes of users as to be
2 effectively available directly to the public.

3 “(B) COMMUNICATIONS SERVICE.—The
4 term ‘communications service’ means tele-
5 communications service, broadband service, or
6 IP-enabled voice service (whether offered sepa-
7 rately or as part of a bundle of services).

8 “(C) IP-ENABLED VOICE SERVICE.—The
9 term ‘IP-enabled voice service’ means the provi-
10 sion of real-time 2-way voice communications
11 offered to the public, or such classes of users as
12 to be effectively available to the public, trans-
13 mitted through customer premises equipment
14 using TCP/IP protocol, or a successor protocol,
15 for a fee (whether part of a bundle of services
16 or separately) with 2-way interconnection capa-
17 bility such that the service can originate traffic
18 to, and terminate traffic from, the public
19 switched telephone network.”.

20 (2) CONFORMING AMENDMENT.—Section
21 254(b)(4) (47 U.S.C. 254(b)(4)) is amended by
22 striking “telecommunications services” and inserting
23 “communications services (as defined in subsection
24 (d)(7)(B))”.

1 (b) PROPER ACCOUNTING OF UNIVERSAL SERVICE
2 CONTRIBUTIONS.—

3 (1) FROM ALL BUDGETS.—Notwithstanding any
4 other provision of law, the receipts and disburse-
5 ments of universal service under section 254 of the
6 Communications Act of 1934 (47 U.S.C. 254) shall
7 not be counted as new budget authority, outlays, re-
8 ceipts, or deficit or surplus for purposes of—

9 (A) the budget of the United States Gov-
10 ernment as submitted by the President;

11 (B) the Congressional budget;

12 (C) the Balanced Budget and Emergency
13 Deficit Control Act of 1985; or

14 (D) any other statute requiring budget se-
15 questers.

16 (2) ADDITIONAL EXEMPTIONS.—Section 1341,
17 subchapter II of chapter 15, and sections 3302,
18 3321, 3322, and 3325 of title 31, United States
19 Code, shall not apply to—

20 (A) the collection and receipt of universal
21 service contributions, including the interest
22 earned on such contributions; or

23 (B) disbursements or other obligations au-
24 thorized by the Commission under section 254

1 of the Communications Act of 1934 (47 U.S.C.
2 254).

3 (c) FINANCIAL MANAGEMENT.—The Federal Com-
4 munications Commission and the Administrator of the
5 Universal Service Fund—

6 (1) shall account for the financial transactions
7 of the Fund in accordance with generally accepted
8 accounting principles for Federal agencies;

9 (2) shall maintain the accounts of the Fund in
10 accordance with the United States Government
11 Standard General Ledger; and

12 (3) may invest unexpended balances only in
13 Federal securities (as defined in section 113(b)(5) of
14 Office of Management and Budget circular OMB A-
15 11).

16 (d) RULEMAKING.—Not later than 180 days after the
17 date of enactment of this Act, the Federal Communica-
18 tions Commission shall issue a rule to implement section
19 254(d) of the Communications Act of 1934 (47 U.S.C.
20 254(d)) as amended by subsection (a).

21 **SEC. 212. TELECOMMUNICATIONS SERVICES FOR LIBRAR-**
22 **IES.**

23 (a) IN GENERAL.—Section 254(h)(4) (47 U.S.C.
24 254(h)(4)) is amended to read as follows:

1 “(4) CERTAIN USERS NOT ELIGIBLE.—Notwith-
2 standing any other provision of this subsection, the fol-
3 lowing entities are not entitled to preferential rates or
4 treatment as required by this subsection:

5 “(A) An entity operated as a for-profit
6 business.

7 “(B) A school described in paragraph
8 (7)(A) with an endowment of more than
9 \$50,000,000.

10 “(C) A library or library consortium not el-
11 igible for assistance under the Library Services
12 and Technology Act (20 U.S.C. 9101 et seq.)—

13 “(i) from a State library administra-
14 tive agency; or

15 “(ii) funded by a grant under section
16 261 of the Library Services and Tech-
17 nology Act (20 U.S.C. 9161) from an In-
18 dian tribe or other organization.”.

19 (b) FUNDING.—Section 254(h)(1) (47 U.S.C.
20 254(h)(1)) is amended by adding at the end the following:

21 “(C) FUNDING.—The obligations under,
22 and administrative costs of, this subsection for
23 any funding year may not exceed the sum of—

24 “(i) the annual program funding cap
25 established by the Commission; and

1 “(ii) any unobligated balances from
2 prior funding years.”.

3 (c) AMERICAN COMMUNITY SURVEY RESIDENTIAL
4 INTERNET ACCESS QUESTION.—The Secretary of Com-
5 merce, in consultation with the Federal Communications
6 Commission, shall expand the American Community Sur-
7 vey conducted by the Bureau of the Census to elicit infor-
8 mation for residential households, including those located
9 on native lands, as to what technology such households
10 use to access the Internet from home.

11 **SEC. 213. MODIFICATION OF RURAL VIDEO SERVICE EX-**
12 **EMPTION.**

13 (a) RURAL TELEPHONE COMPANIES.—Section
14 251(f)(1) (47 U.S.C. 251(f)(1)) is amended—

15 (1) by striking “Subsection” in subparagraph
16 (A) and inserting “Except as provided in subpara-
17 graph (B), subsection”;

18 (2) by striking “interconnection, services, or
19 network elements,” in subparagraph (A) and insert-
20 ing “services or network elements,”;

21 (3) by striking “(under subparagraph (B))” in
22 subparagraph (A) and inserting “(under subpara-
23 graph (C))”

24 (4) by redesignating subparagraphs (B) and
25 (C) as subparagraphs (C) and (D);

1 (5) by inserting after subparagraph (A) the fol-
2 lowing:

3 “(B) INTERCONNECTION.—Notwith-
4 standing subparagraph (A), subsection (c)(2) of
5 this section shall not apply to a rural telephone
6 company until such company has received a
7 bona fide request for interconnection.”;

8 (6) by striking “exemption under subparagraph
9 (A).” in subparagraph (C), as redesignated, and in-
10 serting “exemption.”; and

11 (7) by striking subparagraph (D) as redesign-
12 nated.

13 (b) OTHER RURAL CARRIERS.—Section 251(f)(2) (47
14 U.S.C. 251(f)(2)) is amended by inserting “(other than
15 subsection (c)(2))” after “subsection (b) or (c)”.

16 **SEC. 214. INTERCONNECTION.**

17 Title VII (47 U.S.C. 601 et seq.) is amended by add-
18 ing after section 714 the following new section:

19 **“SEC. 715. RIGHTS AND OBLIGATIONS OF IP-ENABLED**
20 **VOICE SERVICE PROVIDERS.**

21 “(a) IN GENERAL.—An IP-enabled voice service pro-
22 vider shall have the same rights, duties, and obligations
23 as a requesting telecommunications carrier under sections
24 251 and 252, if the provider elects to assert such rights.

1 “(b) DISABLED SERVICES.—An IP-enabled voice
 2 service provider shall have the same rights, duties, and
 3 obligations as a telecommunications carrier under sections
 4 225, 255, and 710. In revising the Commission’s regula-
 5 tions under such sections to carry out this subsection, the
 6 Commission shall consider whether a service or equipment
 7 is marketed as a substitute for telecommunications serv-
 8 ice, telecommunications equipment, customer premises
 9 equipment, or telecommunications relay services.

10 “(c) IP-ENABLED VOICE SERVICE DEFINED.—In
 11 this section, the term ‘IP-enabled voice service’ means the
 12 provision of real-time 2-way voice communications offered
 13 to the public, or such classes of users as to be effectively
 14 available to the public, transmitted through customer
 15 premises equipment using TCP/IP protocol, or a successor
 16 protocol, for a fee (whether part of a bundle of services
 17 or separately) with interconnection capability such that
 18 the service can originate traffic to, or terminate traffic
 19 from, the public switched telephone network.”.

20 **Subtitle B—Distributions from**
 21 **Universal Service**

22 **SEC. 251. BROADBAND REQUIREMENT.**

23 Section 214(e) (47 U.S.C. 214(e)) is amended by
 24 adding at the end the following:

25 “(7) BROADBAND SERVICE REQUIREMENT.—

1 “(A) IN GENERAL.—Notwithstanding para-
2 graph (1), an eligible communications carrier
3 may not receive universal service support under
4 section 254 more than 60 months after the date
5 of enactment of the Internet and Universal
6 Service Act of 2006 if it has not deployed
7 broadband service within its service area before
8 the end of that 60-month period unless it re-
9 ceives a waiver under subparagraph (B).

10 “(B) WAIVERS.—

11 “(i) APPLICATION.—In order to re-
12 ceive a waiver under this subparagraph, an
13 eligible communications carrier shall sub-
14 mit an application to the Commission.

15 “(ii) COST OF DEPLOYMENT.—If an
16 eligible communications carrier dem-
17 onstrates to the satisfaction of the Com-
18 mission that the cost per line of deploying
19 such broadband service is at least 3 times
20 the average cost per line of deploying such
21 broadband service for all eligible commu-
22 nications carriers receiving universal serv-
23 ice support, the Commission shall waive
24 the application of subparagraph (A) to
25 that eligible communications carrier.

1 “(iii) OTHER FACTORS.—If an eligible
2 communications carrier demonstrates to
3 the satisfaction of the Commission that the
4 deployment and provision of such
5 broadband service is not technically fea-
6 sible or would materially impair the car-
7 rier’s ability to continue to provide local
8 exchange service or broadband service
9 throughout its service area, the Commis-
10 sion may waive the application of subpara-
11 graph (A) to that eligible communications
12 carrier.

13 “(iv) DEEMED APPROVAL.—If the
14 Commission fails to act on a waiver re-
15 quest within 60 calendar days after it re-
16 ceives a completed application for the waiv-
17 er, the waiver shall be deemed to be grant-
18 ed. If the Commission requests additional
19 information from the eligible communica-
20 tions carrier, the 60-day period shall be
21 tolled beginning on the date on which re-
22 quest is received by the carrier and ending
23 on the date on which the Commission re-
24 ceives the information requested.

1 “(v) TERM; RENEWAL.—A waiver
2 under this subparagraph—

3 “(I) shall be for a period of not
4 more than 2 years; and

5 “(II) may be renewed, upon ap-
6 plication, by the Commission if the
7 applicant demonstrates that it is eligi-
8 ble for a waiver under clause (ii) or
9 (iii).

10 “(C) NOTIFICATION OF STATE COMMIS-
11 SION.—Whenever the Commission grants a
12 waiver to an eligible communications carrier
13 under subparagraph (B) that has been des-
14 ignated under paragraph (2) by a State com-
15 mission, the Commission shall notify the State
16 commission of the waiver.

17 “(D) DEFINITIONS.—In this paragraph:

18 “(i) BROADBAND SERVICE.—The term
19 ‘broadband service’ means any service used
20 for transmission of information of a user’s
21 choosing with a transmission speed of at
22 least 3 megabits per second in at least 1
23 direction, regardless of the transmission
24 medium or technology employed, that con-

1 nects to the public Internet for a fee di-
2 rectly—

3 “(I) to the public; or

4 “(II) to such classes of users as
5 to be effectively available directly to
6 the public.

7 “(ii) ELIGIBLE COMMUNICATIONS
8 CARRIER.—The term ‘eligible communica-
9 tions carrier’ means an entity designated
10 under paragraph (2), (3), or (6). Any ref-
11 erence to ‘eligible telecommunications car-
12 rier’ in this section is deemed also to refer
13 to ‘eligible communications carrier’.”.

14 **SEC. 252. ESTABLISHMENT OF BROADBAND ACCOUNT**
15 **WITHIN UNIVERSAL SERVICE FUND.**

16 Part I of title II (47 U.S.C. 201 et seq.) is amended
17 by inserting after section 254 the following:

18 **“SEC. 254A. BROADBAND FOR UNSERVED AREAS ACCOUNT.**

19 “(a) ACCOUNT ESTABLISHED.—

20 “(1) IN GENERAL.—There shall be, within the
21 universal service fund established pursuant to sec-
22 tion 254, a separate account to be known as the
23 ‘Broadband for Unserved Areas Account’.

24 “(2) PURPOSE.—The purpose of the Account is
25 to provide financial assistance for the deployment of

1 broadband service to unserved areas throughout the
2 United States.

3 “(b) IMPLEMENTATION.—

4 “(1) IN GENERAL.—Within 180 days after the
5 date of enactment of the Internet and Universal
6 Service Act of 2006, the Commission shall issue
7 rules establishing—

8 “(A) guidelines for determining which
9 areas may be considered to be unserved areas
10 for purposes of this section;

11 “(B) criteria for determining which facili-
12 ties-based providers of broadband service, and
13 which projects, are eligible for support from the
14 Account;

15 “(C) procedural guidelines for awarding
16 assistance from the Account on a merit-based
17 and competitive basis;

18 “(D) guidelines for application procedures,
19 accounting and reporting requirements, and
20 other appropriate fiscal controls for assistance
21 made available from the Account; and

22 “(E) a procedure for making funds in the
23 Account available among the several States on
24 an equitable basis.

25 “(2) SATELLITE SERVICE.—

1 “(A) ELIGIBILITY OF PROVIDER.—A sat-
2 ellite service provider shall be considered to be
3 a facility-based provider eligible for support
4 from the Account.

5 “(B) ELIGIBILITY OF CPE PROJECTS.—
6 The deployment of satellite customer premises
7 equipment may be considered to be a project el-
8 igible for support from the Account.

9 “(C) DESIGNATION OF LIGHTLY SERVED
10 AREAS.—The availability of broadband service
11 by satellite in an area shall not preclude the
12 designation of that area as an unserved area if
13 the Commission determines that subscribership
14 to satellite service in the area is de minimis.

15 “(D) MULTIPLE AREAS WITHIN STATE.—
16 For purposes of this section, there may be more
17 than 1 unserved area within a State.

18 “(3) REPORT.—The Commission shall transmit
19 an annual report to the Senate Committee on Com-
20 merce, Science, and Transportation and the House
21 of Representatives Committee on Energy and Com-
22 merce making recommendations for an increase or
23 decrease, if necessary, in the amounts credited to the
24 account under this section.

25 “(c) LIMITATIONS.—

1 “(1) ANNUAL AMOUNT.—Amounts obligated or
2 expended under subsection (b) for any fiscal year
3 may not exceed \$500,000,000.

4 “(2) USE OF FUNDS.—To the extent that the
5 full amount in the account is not obligated for finan-
6 cial assistance under this section within a fiscal
7 year, any unobligated funds shall be used to support
8 universal service under section 254.

9 “(3) SUPPORT LIMITED TO FACILITIES-BASED
10 SINGLE PROVIDER PER UNSERVED AREA.—Assist-
11 ance under this section may be provided only to—

12 “(A) facilities-based providers of
13 broadband service; and

14 “(B) 1 facility-based provider of broadband
15 service in any unserved area.

16 “(d) APPLICATION WITH SECTIONS 214, 254, AND
17 410.—

18 “(1) SECTION 214(e).—Section 214(e) shall not
19 apply to the Broadband for Unserved Areas Ac-
20 count.

21 “(2) SECTION 254.—Section 254 shall be ap-
22 plied to the Broadband for Unserved Areas Ac-
23 count—

24 “(A) by disregarding—

1 “(i) subsections (a) and (e) thereof;

2 and

3 “(ii) any other provision thereof deter-
4 mined by the Commission to be inappro-
5 priate or inapplicable to implementation of
6 this section; and

7 “(B) by reconciling, to the maximum ex-
8 tent feasible and in accordance with guidelines
9 prescribed by the Commission, the implementa-
10 tion of this section with the provisions of sub-
11 sections (h) and (l) thereof.

12 “(3) SECTION 410.—Section 410 shall not
13 apply to the Broadband for Unserved Areas Ac-
14 count.

15 “(e) BROADBAND SERVICE DEFINED.—

16 “(1) IN GENERAL.—In this section, except to
17 the extent revised by the Commission under para-
18 graph (2), the term ‘broadband service’ means any
19 service used for transmission of information of a
20 user’s choosing with a transmission speed of at least
21 500 kilobits per second in at least 1 direction, re-
22 gardless of the transmission medium or technology
23 employed, that connects to the public Internet for a
24 fee directly—

25 “(A) to the public; or

1 “(B) to such classes of users as to be ef-
2 fectively available directly to the public.

3 “(2) ANNUAL REVIEW OF TRANSMISSION
4 SPEED.—The Commission shall review the trans-
5 mission speed component of the definition in sub-
6 paragraph (A) no less frequently than once each
7 year and revise that component as appropriate.”.

8 **SEC. 253. ELIGIBILITY GUIDELINES.**

9 Section 214(e) (47 U.S.C. 214(e)), as amended by
10 section 251, is amended by adding at the end the fol-
11 lowing:

12 “(8) ELIGIBILITY GUIDELINES.—A common
13 carrier may not be designated as an eligible commu-
14 nications carrier (as defined in paragraph (7)(D)(ii))
15 subsection unless it—

16 “(A) provides a 5-year plan demonstrating
17 how high-cost universal service support will be
18 used to improve its coverage, service quality, or
19 capacity in every wire center for which it seeks
20 designation and expects to receive universal
21 service;

22 “(B) demonstrates its ability to remain
23 functional in emergency situations;

24 “(C) demonstrates that it will satisfy con-
25 sumer protection and service quality standards;

1 “(D) offers local usage plans comparable
2 to those offered by the incumbent local ex-
3 change carrier in the areas for which it seeks
4 designation; and

5 “(E) acknowledges that it may be required
6 to provide equal access if all other eligible tele-
7 communications carriers in the designated serv-
8 ice area relinquish their designations pursuant
9 to paragraph (4) of this subsection.”.

10 **SEC. 254. PRIMARY LINE.**

11 Section 214(e) (47 U.S.C. 214(e)), as amended by
12 section 253, is amended by adding at the end the fol-
13 lowing:

14 “(9) PRIMARY LINE.—In implementing the re-
15 quirements of this Act with respect to the distribu-
16 tion and use of Federal universal service support the
17 Commission shall not limit such distribution and use
18 to a single connection or primary line, and all resi-
19 dential and business lines served by an eligible tele-
20 communications carrier shall be eligible for Federal
21 universal service support.”.

22 **SEC. 255. PHANTOM TRAFFIC.**

23 Section 254 (47 U.S.C. 254) is amended by adding
24 at the end the following:

1 “(i) NETWORK TRAFFIC IDENTIFICATION ACCOUNT-
2 ABILITY STANDARDS.—

3 “(1) NETWORK TRAFFIC IDENTIFICATION
4 STANDARDS.—An provider of voice communications
5 services (including an IP-enabled voice service pro-
6 vider) shall ensure that all traffic that originates on
7 its network contains sufficient information to allow
8 for traffic identification by other communications
9 service providers that transport, transit, or termi-
10 nate such traffic, including information on the iden-
11 tity of the originating provider, the calling and called
12 parties, and such other information as the Commis-
13 sion deems appropriate.

14 “(2) NETWORK TRAFFIC IDENTIFICATION
15 RULEMAKING.—The Commission, in consultation
16 with the States, shall initiate a single rulemaking no
17 later than 180 days after the date of enactment of
18 the Internet and Universal Service Act of 2006 to
19 establish rules and enforcement provisions for traffic
20 identification.

21 “(3) NETWORK TRAFFIC IDENTIFICATION EN-
22 FORCEMENT.—The Commission shall adopt clear
23 penalties, fines, and sanctions for insufficiently la-
24 beled traffic.”.

1 **SEC. 256. RANDOM AUDITS.**

2 Section 214(e) (47 U.S.C. 214(e)), as amended by
3 section 254, is amended by adding at the end the fol-
4 lowing:

5 “(10) AUDITS.—Each State commission that
6 designates an eligible communications provider (as
7 defined in paragraph (7)(D)(ii) and the Commission,
8 with respect to eligible communications carriers des-
9 ignated by it, shall provide for random periodic au-
10 dits of each such carrier with respect to its receipt
11 and use of universal service support and its relative
12 cost to provide service compared to other, similarly
13 situated, universal service recipients based on their
14 respective study areas or service areas.”.

15 **SEC. 257. WASTE, FRAUD, AND ABUSE.**

16 The Federal Communications Commission, in con-
17 sultation with the Administrator of the Universal Service
18 Administrative Company, shall—

19 (1) ensure the integrity and accountability of all
20 programs established under section 254(h) of the
21 Communications Act of 1934 (47 U.S.C. 254(h));
22 and

23 (2) not later than 180 days after the date of
24 enactment of this Act, establish rules—

25 (A) identifying appropriate fiscal controls
26 and accountability standards that shall be ap-

1 plied to the Schools and Libraries Program
2 under section 254(h);

3 (B) including a memorandum of under-
4 standing, or including contractual relationships,
5 as the Commission determines appropriate, de-
6 fining the administrative structure and proc-
7 esses by which the Universal Service Adminis-
8 trative Company administers the Schools and
9 Libraries Program under section 254(h);

10 (C) creating performance goals and meas-
11 ures for the Schools and Libraries Program
12 under section 254(h), such goals and measures
13 shall be used by the Commission to determine—

14 (i) how efficiently and cost-effectively
15 funds are spent in supporting the tele-
16 communications needs of schools and li-
17 braries; and

18 (ii) areas for improved operations; and

19 (D) establishing appropriate enforcement
20 actions, including imposition of sanctions on ap-
21 plicants and vendors who repeatedly and know-
22 ingly violate program rules set forth in section
23 254(h), such as debarment from the program
24 for individuals convicted of crimes or held civilly

1 liable for actions taken in connection with the
2 Schools and Libraries Program.

3 **TITLE III—STREAMLINING**
4 **FRANCHISING PROCESS**

5 **SEC. 301. SHORT TITLE.**

6 This title may be cited as the “Video Competition and
7 Savings for Consumers Act of 2006”.

8 **Subtitle A—Updating the 1934 Act**
9 **and Leveling the Regulatory**
10 **Playing Field**

11 **SEC. 311. APPLICATION OF TITLE VI TO VIDEO SERVICES**
12 **AND VIDEO SERVICE PROVIDERS.**

13 (a) **TERMINOLOGY.**—Title VI (47 U.S.C. 521 et
14 seq.), except for section 602 (47 U.S.C. 522), is amend-
15 ed—

16 (1) by striking “cable operator” and “cable op-
17 erators” each place they appear and inserting “video
18 service provider” or “video service providers”, as ap-
19 propriate;

20 (2) by striking “cable service” and “cable serv-
21 ices” each place they appear and inserting “video
22 service” or “video services”, respectively;

23 (3) by striking “cable” each place it appears,
24 except the second place it appears in section 624(i),
25 and inserting “video service”;

1 (4) by striking “operator” each place it appears
2 and inserting “provider”;

3 (5) by striking “cassette” each place it appears;
4 and

5 (6) by striking “tape” each place it appears and
6 inserting “copy”.

7 (b) HEADINGS.—Title VI (47 U.S.C. 521 et seq.) is
8 amended—

9 (1) by striking the heading for title VI and in-
10 serting “**TITLE VI—VIDEO SERVICES**”;

11 (2) by striking the heading for part II and in-
12 serting “**PART II—USE OF VIDEO SERV-**
13 **ICES; RESTRICTIONS**”;

14 (3) by striking the heading for part III and in-
15 serting “**PART III—FRANCHISING**”; and

16 (4) striking “**CABLE**” in the heading for sec-
17 tions 633 and 640 and inserting “**VIDEO SERV-**
18 **ICE**”.

19 (c) REGULATIONS.—

20 (1) NEW REGULATIONS.—Within 120 days
21 after the date of enactment of this Act, the Commis-
22 sion shall issue regulations to implement sections
23 603, 612, 621, and 622 of the Communications Act
24 of 1934, as amended by this Act.

1 (2) UPDATING EXISTING REGULATIONS.—With-
2 in 120 days after the date of enactment of this Act,
3 the Commission shall issue, as necessary, updated
4 regulations needed under title VI or other provisions
5 of the Communications Act of 1934 to reflect the
6 amendments made by this Act.

7 **SEC. 312. PURPOSE; FRANCHISE APPLICATIONS; SCOPE.**

8 (a) PURPOSE.—Section 601 (47 U.S.C. 521) is
9 amended to read as follows:

10 **“SEC. 601. PURPOSE.**

11 “It is the purpose of this title to establish a com-
12 prehensive Federal legal framework for the franchising of
13 video services that use public rights-of-way.”

14 (b) FRANCHISE APPLICATION; SCOPE.—Part I of
15 title VI (47 U.S.C. 521 et seq.) is amended by adding at
16 the end the following:

17 **“SEC. 603. FRANCHISE APPLICATIONS.**

18 “(a) IN GENERAL.—

19 “(1) 30-DAY PROCESS.—Except as otherwise
20 provided in this subsection, a franchising authority
21 shall grant a franchise to provide video service with-
22 in its franchise area to a video service provider with-
23 in 30 calendar days after receiving a franchise appli-
24 cation from the video service provider that is com-
25 plete except for—

1 “(A) the franchise fee, as provided by sec-
2 tion 622;

3 “(B) the number of public, educational, or
4 governmental use channels required by section
5 611;

6 “(C) any fee that may be assessed under
7 section 622(b)(5); and

8 “(D) the point of contact for the fran-
9 chising authority.

10 “(2) STANDARDIZED APPLICATION FORM.—A
11 video service provider shall use the standard fran-
12 chise application form promulgated by the Commis-
13 sion under section 612.

14 “(3) RESPONSIBILITIES OF FRANCHISE AU-
15 THORITY.—Within 15 calendar days after receiving
16 a franchise application under paragraph (1), a fran-
17 chising authority may—

18 “(A) complete the application form by pro-
19 viding the information described in subpara-
20 graphs (A), (B), (C) and (D) of paragraph (1)
21 in a manner that is consistent with the require-
22 ments of this title; and

23 “(B) return the completed application to
24 the video service provider.

1 “(4) ACCEPTANCE OF TERMS.—A franchising
2 agreement shall take effect on the date on which the
3 completed franchise application is received by the
4 applicant under paragraph (3)(B) unless the appli-
5 cant notifies the franchising authority within 15 cal-
6 endar days after receipt of the completed franchise
7 application form that the terms provided are not ac-
8 cepted.

9 “(5) EXCEPTION.—This subsection does not re-
10 quire a franchise authority to approve or complete
11 an application from a video service provider if a
12 franchise held by that provider has been revoked
13 under section 625(b) or 640 by the franchise author-
14 ity.

15 “(b) DEEMED APPROVAL.—Except as provided in
16 subsection (a)(5), if a franchising authority fails to act
17 on a franchise application that meets the requirements of
18 paragraphs (1) and (2) of subsection (a) within the 30-
19 day period, the franchise application shall be deemed to
20 be granted—

21 “(1) effective on the 31st day after the fran-
22 chising authority received the application;

23 “(2) for a term of 15 years;

24 “(3) with a franchise fee equal to the lesser
25 of—

1 “(A) the fee paid by the cable operator
2 with the most subscribers offering cable service
3 in the franchise area; or

4 “(B) 5 percent of gross revenue (deter-
5 mined under section 622); and

6 “(4) with an obligation to provide the number
7 of public, educational, or governmental use channels
8 required by section 611.

9 “(c) PROCEDURE.—If an application is not granted
10 within 30 days after its receipt by a franchising authority
11 because of subsection (a)(5), the applicant may avail itself
12 of the procedures in section 635 of this Act.

13 **“SEC. 604. NO EFFECT ON STATE LAWS OF GENERAL APPLI-
14 CABILITY.**

15 “Nothing in this title is intended to affect State or
16 local laws of general applicability for all businesses, except
17 to the extent that such laws are inconsistent with this title.

18 **“SEC. 605. DIRECT BROADCAST SATELLITE SERVICE.**

19 “No State or local government may regulate direct
20 broadcast satellite services (as that term is used in section
21 335 of this Act).”.

22 **SEC. 313. STANDARD FRANCHISE APPLICATION FORM.**

23 Section 612 (47 U.S.C. 532) is amended to read as
24 follows:

1 **“SEC. 612. STANDARD FRANCHISE AGREEMENT FORM.**

2 “Within 30 days after the date of enactment of the
3 Video Competition and Savings for Consumers Act of
4 2006, the Commission shall promulgate a standard fran-
5 chise agreement form, the use of which by franchising au-
6 thorities shall be mandatory. The franchise application
7 form shall include blank spaces to be filled in by the video
8 service provider and the franchising authority, as appro-
9 priate, for—

10 “(1) the name of the video service provider;

11 “(2) the name and business address of each di-
12 rector and principal executive officers;

13 “(3) a point of contact for the video service pro-
14 vider;

15 “(4) a point of contact for the franchising au-
16 thority;

17 “(5) the fees;

18 “(6) the period during which the franchising
19 agreement shall be in effect;

20 “(7) the public, educational, or governmental
21 programming to be provided;

22 “(8) the physical location of the headend; and

23 “(9) a description of the video service to be pro-
24 vided.”.

1 **SEC. 314. DEFINITIONS.**

2 (a) IN GENERAL.—Section 602 (47 U.S.C. 522) is
3 amended—

4 (1) by striking “cable system” in paragraphs
5 (1) and (9) and inserting “video service system”;

6 (2) by striking “regulation);” in paragraph (4)
7 and inserting “regulation) or its equivalent (as de-
8 termined by the Commission).”;

9 (3) by inserting after paragraph (11) the fol-
10 lowing:

11 “(11A) ‘headend’ means the headend of a cable
12 system or video service system.”;

13 (4) by inserting after paragraph (12) the fol-
14 lowing:

15 “(12A) ‘institutional network’ means a commu-
16 nication network that is constructed or operated by
17 a video service provider cable operator and that is
18 generally available only to subscribers who are not
19 residential subscribers.”;

20 (5) by striking “cable operator” in paragraph
21 (14) and inserting “video service provider”;

22 (6) by inserting after paragraph (16) the fol-
23 lowing:

24 “(16A) ‘satellite carrier’ means an entity that
25 uses the facilities of a satellite or satellite service li-
26 censed by the Federal Communications Commission

1 and operates in the Fixed-Satellite Service under
2 part 25 of title 47 of the Code of Federal Regula-
3 tions or the Direct Broadcast Satellite Service under
4 part 100 of title 47 of the Code of Federal Regula-
5 tions, to establish and operate a channel of commu-
6 nications for point-to-multipoint distribution of tele-
7 vision station signals, and that owns or leases a ca-
8 pacity or service on a satellite in order to provide
9 such point-to-multipoint distribution, except to the
10 extent that such entity provides such distribution
11 pursuant to tariff under the Communications Act of
12 1934, other than for private home viewing.”;

13 (7) by striking “cable service” in paragraph
14 (17) and inserting “video service”;

15 (8) by striking “cable operator” each place it
16 appears in paragraph (17) and inserting “video serv-
17 ice provider”; and

18 (9) by inserting after paragraph (20) the fol-
19 lowing:

20 “(24) VIDEO SERVICE.—The term ‘video serv-
21 ice’ means—

22 “(A) video programming;

23 “(B) interactive on demand services; or

24 “(C) other programming services.

1 “(25) VIDEO SERVICE PROVIDER.—The term
2 ‘video service provider’—

3 “(A) means a provider of video service that
4 utilizes a public right-of-way in the provision of
5 such service, including a cable operator; but

6 “(B) does not include—

7 “(i) a satellite carrier;

8 “(ii) any person providing video pro-
9 gramming using radio communication di-
10 rectly to the recipient’s premises; or

11 “(iii) any provider of commercial mo-
12 bile service (as defined in section
13 332(d)).”.

14 (b) STYLISTIC CONSISTENCY.—Section 602 (47
15 U.S.C. 622), as amended by subsection (a), is amended—

16 (1) by striking “title—” and inserting “title:”;

17 (2) by redesignating paragraphs (1) through
18 (20) as paragraphs (1) through (23);

19 (3) by striking the semicolon at the end of each
20 such paragraph and inserting a period; and

21 (4) by inserting after the designation of each
22 such paragraph—

23 (A) a heading, in a form consistent with
24 the form of the heading of paragraphs (24) and
25 (25), as added by subsection (a) of this section

1 consisting of the term defined by such para-
2 graph, or the first term so defined in the para-
3 graph defines more than 1 term; and

4 (B) the words “The term”.

5 **Subtitle B—Streamlining the**
6 **Provision of Video Services**

7 **SEC. 331. FRANCHISE REQUIREMENTS AND RELATED PRO-**
8 **VISIONS.**

9 (a) GENERAL FRANCHISE REQUIREMENTS.—Section
10 621 (47 U.S.C. 541) is amended—

11 (1) by striking subsection (a) and inserting the
12 following:

13 “(a) IN GENERAL.—

14 “(1) AWARD OF FRANCHISE.—A franchising
15 authority may not—

16 “(A) grant an exclusive franchise; or

17 “(B) grant a franchise for a term shorter
18 than 5 years or longer than 15 years.

19 “(2) PRESERVATION OF LOCAL GOVERNMENT
20 POWER TO MANAGE PUBLIC RIGHTS-OF-WAY; EASE-
21 MENTS.—

22 “(A) IN GENERAL.—Nothing in this title
23 affects the authority of a State or local govern-
24 ment to apply its laws or regulations governing
25 the use of the public rights of way in a manner

1 that is reasonable, competitively neutral, non-
2 discriminatory, and consistent with State statu-
3 tory police powers, including permitting, pay-
4 ments for bonds, security funds, letters of cred-
5 it, insurance, indemnification, penalties, or liq-
6 uidated damages to ensure compliance with
7 such laws and regulations.

8 “(B) LIMITATIONS ON PERMITTING
9 FEES.—

10 “(i) IN GENERAL.—A State or local
11 government may not—

12 “(I) impose a permitting fee on a
13 video service provider that exceeds the
14 estimated direct costs incurred by the
15 State or local government in issuing
16 the permit;

17 “(II) impose any conditions for
18 market entry or use this section as a
19 barrier to entry by a video service pro-
20 vider; or

21 “(III) take any action that would
22 delay the provision of video services
23 by a video service provider in a local
24 franchise area.

1 “(ii) RECONCILIATION OF OVER-
2 CHARGES.—Within 30 days after any re-
3 estimate of estimated direct costs for pur-
4 poses of clause (i)(I) that—

5 “(I) requires a reduction in the
6 permitting fee, the State or local gov-
7 ernment shall refund the excess, if
8 any, to the video service provider; or

9 “(II) results in an increase in the
10 permitting fee, the video service pro-
11 vider shall pay the difference between
12 the amount paid and the increased fee
13 to the State or local government.

14 “(C) TIMELY ACTION REQUIRED.—In
15 managing the public rights-of-way a State or
16 local government that issues permits or licenses
17 for use of the public rights-of-way shall act
18 upon any such request for use in a timely man-
19 ner.

20 “(D) NEW ROADS.—Nothing in this sec-
21 tion shall affect the ability of a State or local
22 government to impose reasonable limits on ac-
23 cess to public rights-of-way associated with
24 newly constructed roads.

1 “(E) PREVENTION OF ABUSE OF
2 POWER.—If the Commission determines in a
3 proceeding brought by a video service provider
4 to enforce this subsection that a franchising au-
5 thority abused the authority provided by this
6 section in violation of subparagraph (B), the
7 Commission may award reasonable attorneys’
8 fees and Commission costs to the video service
9 provider.”; and

10 (2) by striking paragraph (1) of subsection (b)
11 and inserting “(1) Except to the extent provided in
12 subsection (f), a video service provider may not pro-
13 vide video service without a franchise.”.

14 (b) FRANCHISE FEE.—Section 622 (47 U.S.C. 542)
15 is amended—

16 (1) by striking subsections (a) and (b) and in-
17 serting the following:

18 “(a) IN GENERAL.—A franchising authority may im-
19 pose and collect a franchise fee from a video service pro-
20 vider that provides video services within the local franchise
21 area of that authority.

22 “(b) AMOUNT.—

23 “(1) IN GENERAL.—The franchise fee imposed
24 by a franchising authority under subsection (a) for
25 any 12-month period may not exceed 5 percent of

1 the video service provider's gross revenue derived in
2 such period. For purposes of this section, the 12-
3 month period shall be the 12-month period applica-
4 ble under the franchise for accounting purposes.

5 “(2) PREPAID OR DEFERRED PAYMENT AR-
6 RANGEMENTS.—Nothing in this subsection prohibits
7 a franchising authority and a video service provider
8 from agreeing that franchise fees which lawfully
9 could be collected for any such 12-month period
10 shall be paid on a prepaid or deferred basis, except
11 that the sum of the fees paid during the term of the
12 franchise may not exceed the amount, including the
13 time value of money, which would have lawfully been
14 collected if such fees had been paid per annum.

15 “(3) FRANCHISING AUTHORITY AND VIDEO
16 SERVICE PROVIDER AGREEMENTS.—Nothing in this
17 section precludes a State or local government and a
18 video service provider from entering into a voluntary
19 commercial agreement, whereby in consideration for
20 a mutually agreed upon reduction in the franchise
21 fee under paragraph (1), the video service provider
22 makes available to the local unit of government serv-
23 ices, equipment, capabilities, or other valuable con-
24 sideration.

1 “(4) PEG AND INSTITUTIONAL NETWORK FI-
2 NANCIAL SUPPORT.—

3 “(A) IN GENERAL.—A video service pro-
4 vider with a franchise under this section for a
5 franchise area may be required to pay an
6 amount equal to not more than 1 percent of the
7 video service provider’s gross revenue in the
8 franchise area to the franchising authority for
9 the support of public, educational, and govern-
10 mental use and institutional networks. The pay-
11 ment shall be assessed and collected in a man-
12 ner consistent with this section.

13 “(B) EXISTING FRANCHISE INSTITU-
14 TIONAL NETWORKS.—A franchising authority
15 may require a cable operator to continue to pro-
16 vide any institutional network provided by that
17 cable operator before executing a franchise
18 agreement under this title.

19 “(C) INCREMENTAL COSTS.—If the incre-
20 mental cost of operating an institutional net-
21 work under subparagraph (B) is less than 1
22 percent of the video service provider’s gross rev-
23 enue, the video service provider may deduct the
24 incremental cost of operating the institutional
25 network from the contribution required under

1 subparagraph (A). The franchising authority
2 shall reimburse the video service provider for
3 the amount by which the incremental cost of
4 operating such institutional network exceeds
5 any fee required under subparagraph (A).

6 “(D) ADJUSTMENT.—Every 15 years after
7 the commencement of a franchise granted after
8 April 30, 2006, a franchising authority may re-
9 quire a video service provider to increase the
10 channel capacity designated for public, edu-
11 cational, or governmental use, and the channel
12 capacity designated for such use on any institu-
13 tional networks required under subparagraph
14 (A). The increase may not exceed the greater
15 of—

16 “(i) 1 channel; or

17 “(ii) 10 percent of the public, edu-
18 cational, or governmental channel capacity
19 required of the video service provider be-
20 fore the required increase.”; and

21 (2) by striking subsections (d) through (h) and
22 inserting the following:

23 “(d) OTHER TAXES, FEES, AND ASSESSMENTS NOT
24 AFFECTED.—

1 “(1) IN GENERAL.—Nothing in this section
2 shall be construed to modify, impair, or supersede,
3 or authorize the modification, impairment, or super-
4 session of, any State or local law pertaining to tax-
5 ation.

6 “(2) GENERALLY APPLICABLE TAXES, FEES,
7 AND ASSESSMENTS.—Nothing in this section shall be
8 construed to modify, impair, or supersede any Fed-
9 eral, State, or local tax, fee, or assessment, or other
10 charges that are—

11 “(A) applicable to services other than video
12 service; or

13 “(B) generally applicable (including any
14 such tax, fee, assessment, or charge imposed on
15 both utilities and video service providers or
16 their services other than a tax, fee, assessment,
17 or charge that is unduly discriminatory against
18 video service providers or video service sub-
19 scribers).

20 “(3) TELECOMMUNICATIONS SERVICES.—Noth-
21 ing in this section is intended to modify, impair, or
22 supersede the ability of any State to impose a tax,
23 fee, or assessment (including any such tax, fee, or
24 assessment that is imposed by the State and remit-
25 ted to its political subdivisions) that is—

1 “(A) measured by the sales price of a tele-
2 communications service and required to be paid
3 by all telecommunications service providers or
4 their customers (including video service pro-
5 viders) on a nondiscriminatory basis; and

6 “(B) in lieu of any compensation or other
7 charge for using or occupying the public rights-
8 of-way to provide telecommunications service,
9 including the franchise fee authorized by this
10 section.

11 “(e) ANNUAL REVIEW.—

12 “(1) AUDIT PROCEDURE.—A franchising au-
13 thority that believes that it is not receiving the full
14 amount of the video service fee imposed under this
15 section may petition its State commission to com-
16 mence an audit to ensure compliance with the defini-
17 tion of gross revenue and the calculation of fees
18 under this section. The State commission shall co-
19 ordinate audits to the maximum extent possible to
20 avoid unnecessary duplication and cost on carriers.

21 “(2) REIMBURSEMENT OF FRANCHISING AU-
22 THORITY FOR SUBSTANTIAL DEFICIENCIES.—If
23 there is a final determination, after the dispute reso-
24 lution procedures under subsection (f) have been
25 completed, that the video service provider has under-

1 paid the franchise fee imposed under this section by
2 5 percent or more for the 12-month period that was
3 the subject of the review, the video service provider
4 shall reimburse the franchising authority for the rea-
5 sonable costs associated with the review. Those costs
6 include any reasonable amount paid by the fran-
7 chising authority to an independent third party for
8 conducting the review other than any amount paid
9 to an independent third party under a contingency
10 fee arrangement.

11 “(3) STATUTE OF LIMITATIONS.—A franchising
12 authority may not request a review under paragraph
13 (1) for any 12-month period ending more than 36
14 months before the date on which the request is sub-
15 mitted.

16 “(f) DISPUTE RESOLUTION PROCEDURE.—

17 “(1) NOTICE; 30-DAY PERIOD.—If there is a
18 dispute between a franchising authority and a video
19 service provider over the amount or payment of the
20 fee authorized by this section that has not been re-
21 solved between the parties in a reasonable period of
22 time under normal business procedures, the ag-
23 grieved party may give the other party written notice
24 of intent to initiate the dispute resolution procedure
25 provided by this subsection. Within 30 calendar days

1 after the notice has been received by the second
2 party, representatives of each party with authority
3 to settle the dispute shall meet at a mutually agreed
4 upon time and place to attempt to negotiate a reso-
5 lution of the dispute.

6 “(2) 60-DAY PERIOD; COMMISSION COMPLAINT
7 PROCEDURE.—

8 “(A) IN GENERAL.—If the dispute has not
9 been resolved within 60 calendar days after the
10 notice has been received by the second party, ei-
11 ther party may file a complaint with the Com-
12 mission.

13 “(B) INFORMATION PROVIDED IN THE
14 COURSE OF NEGOTIATIONS.—For the purpose
15 of any adjudication by the Commission under
16 this subsection, information provided by either
17 party to the other in negotiations under sub-
18 paragraph (A) shall be treated as compromise
19 and settlement negotiations for purposes of the
20 Federal Rules of Evidence.

21 “(C) STATUTE OF LIMITATIONS.—Not-
22 withstanding subparagraph (A), no complaint
23 may be filed with the Commission under this
24 paragraph more than 3 years after the end of
25 the quarter to which the disputed amount re-

1 lates, unless the 3-year period is extended by
2 written agreement between the video service
3 provider and the local government franchising
4 authority.

5 “(D) PROCEDURAL REQUIREMENTS.—The
6 Commission shall adopt rules establishing pro-
7 cedures for handling complaints under this
8 paragraph, which shall require that—

9 “(i) the complaint be heard by an ad-
10 ministrative law judge;

11 “(ii) any decision of the administra-
12 tive law judge be directly reviewable by the
13 Commission upon the request of either
14 party;

15 “(iii) any review by the Commission
16 be limited to the record before the adminis-
17 trative law judge;

18 “(iv) the complaint be treated as a re-
19 stricted proceeding under subpart H of
20 part 1 of the Commission’s regulations (47
21 C.F.R. part 1, subpart H); and

22 “(v) any review of the Commission’s
23 decision shall be brought as provided in
24 section 402(a) of this Act.

1 “(g) GAAP STANDARDS.—For purposes of this sec-
2 tion, all financial determinations and computations shall
3 be made in accordance with generally accepted accounting
4 principles except as otherwise provided.

5 “(h) DEFINITIONS.—In this section:

6 “(1) FRANCHISE FEE.—The term ‘franchise
7 fee’—

8 “(A) includes any tax, fee, or assessment
9 of any kind imposed by a franchising authority
10 or other governmental entity on a video service
11 provider or subscriber, or both, solely because
12 of their status as such; but

13 “(B) does not include—

14 “(i) any tax, fee, or assessment of
15 general applicability (including any such
16 tax, fee, or assessment imposed on both
17 utilities and video service providers or their
18 services but not including a tax, fee, or as-
19 sessment which is unduly discriminatory
20 against video service providers or sub-
21 sscribers);

22 “(ii) any fee that is required by the
23 franchise under section 622(b);

24 “(iii) requirements or charges inci-
25 dental to the awarding or enforcing of the

1 franchise, including payments for bonds,
2 security funds, letters of credit, insurance,
3 indemnification, penalties, or liquidated
4 damages; or

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

7 “(2) GROSS REVENUE.—

8 “(A) IN GENERAL.—The term ‘gross rev-
9 enue’ means all consideration of any kind or
10 nature including cash, credits, property, and in-
11 kind contributions (services or goods) received
12 by a video service provider from the provision of
13 broadband video service within a local franchise
14 area including—

15 “(i) all charges and fees paid by sub-
16 scribers for the provision of video service,
17 including fees attributable to video service
18 when that service is sold individually or as
19 part of package, bundle, or functionally in-
20 tegrated with services other than video
21 service; and

22 “(ii) revenue received by a video serv-
23 ice provider as compensation for carriage
24 of video programming on the provider’s
25 system.

1 “(B) AFFILIATES.—The gross revenue of a
2 video service provider includes gross revenue of
3 an affiliate to the extent the exclusion of the af-
4 filiate’s gross revenue would have the effect of
5 permitting the video service provider to evade
6 the payment of franchise fees which would oth-
7 erwise be paid by that video service provider for
8 video services provided within the local fran-
9 chise area of the franchising authority imposing
10 the fee.

11 “(C) REVENUE FROM BUNDLED OR FUNC-
12 TIONALLY INTEGRATED SERVICE.—In the case
13 of a video service that is bundled or functionally
14 integrated with other services, capabilities, or
15 applications, the portion of the video service
16 provider’s revenue attributable to such other
17 services, capabilities, or applications shall be in-
18 cluded in gross revenue unless the video service
19 provider can reasonably identify the division or
20 exclusion of such revenue from its books and
21 records kept in the regular course of business.

22 “(D) EXCLUSIONS.—Gross revenue of a
23 video service provider (or an affiliate to the ex-
24 tent otherwise included in the gross revenue of

1 the video service provider under subparagraph
2 (B)) does not include—

3 “(i) any revenue not actually received,
4 even if billed, such as bad debts net of any
5 recoveries of bad debts;

6 “(ii) refunds, rebates, credits, or dis-
7 counts to subscribers or a municipality to
8 the extent not excluded under clause (i);

9 “(iii) subject to subparagraph (C),
10 any revenues received by a video service
11 provider or its affiliates from the provision
12 of services or capabilities other than video
13 service, including—

14 “(I) voice, Internet access, or
15 other broadband-enabled applications;
16 and

17 “(II) services, capabilities, and
18 applications that are sold or provided
19 as part of a package or bundle of
20 services or capabilities, or that are
21 functionally integrated with video
22 service;

23 “(iv) any revenues received by a video
24 service provider or its affiliates for the pro-
25 vision of directory or Internet advertising,

1 including yellow pages, white pages, banner
2 advertisement, and electronic publishing;

3 “(v) any amounts attributable to the
4 provision of video services to subscribers at
5 no charge, including the provision of such
6 services to public institutions without
7 charge;

8 “(vi) any revenue derived from home
9 shopping channels;

10 “(vii) any revenue forgone from the
11 provision of video service at no charge to
12 any person other than forgone revenue ex-
13 changed for trades, barter, services, or
14 other items of value;

15 “(viii) any tax, fee, or assessment of
16 general applicability imposed on a sub-
17 scriber, subscription, or subscription-re-
18 lated transaction by Federal, State, or
19 local government that is required to be col-
20 lected by the video service provider and re-
21 mitted to the taxing authority, including
22 sales taxes, use taxes, and utility user
23 taxes;

24 “(ix) any revenue from the sale of
25 capital assets or surplus equipment;

1 “(x) the reimbursement by program-
2 mers for marketing costs actually incurred
3 by a video service provider for the intro-
4 duction of new programming; or

5 “(xi) any revenue from the sale of
6 video services for resale to the extent that
7 the purchaser certifies in writing that it
8 will—

9 “(I) resell the service; and

10 “(II) pay any applicable fran-
11 chise fee with respect thereto.”.

12 **SEC. 332. RENEWAL; REVOCATION.**

13 Part II of title VI (47 U.S.C. 541 et seq.) is amend-
14 ed—

15 (1) by striking section 623 and redesignating
16 sections 624 and 624A as sections 623 and 624, re-
17 spectively; and

18 (2) by striking sections 625 and 626 and insert-
19 ing the following:

20 **“SEC. 625. RENEWAL; REVOCATION.**

21 “(a) RENEWAL.—A video service provider may sub-
22 mit a written application for renewal of its franchise to
23 a franchising authority not more than 180 days before the
24 franchise expires. Any such application shall be made on
25 the standard application form promulgated by the Com-

1 mission under section 612 and shall be treated under sec-
2 tion 603 in the same manner as any other franchise appli-
3 cation.

4 “(b) REVOCATION.—A franchising authority may re-
5 voke a video service provider’s franchise to provide video
6 services if it determines, after notice and an opportunity
7 for a hearing, that the video service provider has willfully
8 and repeatedly—

9 “(1) violated any Federal or State law, or any
10 Commission regulation, relating to the provision of
11 video services in the franchise area;

12 “(2) made false statements, or material omis-
13 sions, in any filing with the Commission relating to
14 the provision of video service in the franchise area;
15 or

16 “(3) violated the rights-of-way management
17 laws or regulations of any franchising authority in
18 the franchise area relating to the provision of video
19 service in the franchise area.

20 “(c) NOTICE; OPPORTUNITY TO CURE.—A fran-
21 chising authority may not revoke a franchise unless it first
22 provides—

23 “(1) written notice to the video service provider
24 of the alleged violation in which the revocation would
25 be based; and

1 “(2) a reasonable opportunity to cure the viola-
2 tion.

3 “(d) FINALITY OF DECISION.—Any decision of a
4 franchising authority to revoke a franchise under this sec-
5 tion is final for purposes of appeal. A video service pro-
6 vider whose franchise is revoked by a franchising authority
7 may avail itself of the procedures in section 635 of this
8 Act.

9 “(e) PREVENTION OF ABUSE OF POWER.—A fran-
10 chising authority may not use this section as a barrier to
11 entry by a video service provider. If the Commission deter-
12 mines, in a proceeding brought by a video service provider
13 to enforce this subsection, that a franchising authority
14 abused the authority provided by this section in violation
15 of the preceding sentence, the Commission may award rea-
16 sonable attorneys’ fees and Commission costs to the video
17 service provider.”.

18 **SEC. 333. PEG AND INSTITUTIONAL NETWORK OBLIGA-**
19 **TIONS.**

20 Section 611 (47 U.S.C. 531) is amended to read as
21 follows:

22 **“SEC. 611. CHANNELS FOR PUBLIC, EDUCATIONAL, OR GOV-**
23 **ERNMENTAL USE.**

24 “(a) IN GENERAL.—A video service provider that ob-
25 tains a franchise shall provide channel capacity for public,

1 educational, or governmental use that is not less than the
2 channel capacity required of the video service provider
3 with the greatest number of public, educational, or govern-
4 mental use channels in the franchise area on the effective
5 date of that franchise. If there is no other video service
6 provider in the franchise area on the effective date of the
7 franchise, the video service provider shall provide the
8 amount of channel capacity for such use as determined
9 by Commission rule.

10 “(b) EDITORIAL CONTROL.—Subject to section
11 623(b)(1), a video service provider shall not exercise any
12 editorial control over any public, educational, or govern-
13 mental use of channel capacity provided pursuant to this
14 section, but a video service provider may refuse to trans-
15 mit any public access program or portion of a public ac-
16 cess program which contains obscenity.

17 “(c) TRANSMISSION AND PRODUCTION OF PROGRAM-
18 MING.—

19 “(1) PEG PROGRAMMING.—A video service pro-
20 vider shall ensure that all subscribers receive any
21 public, educational, or governmental programming
22 carried by the video service provider within the sub-
23 scriber’s franchise area.

24 “(2) PRODUCTION RESPONSIBILITY.—The pro-
25 duction of any programming provided under this

1 subsection shall be the responsibility of the fran-
2 chising authority.

3 “(3) TRANSMISSION RESPONSIBILITY.—The
4 video service provider shall be responsible for the
5 transmission from the signal origination point (or
6 points) of the programming, or from the point of
7 interconnection with another video service provider
8 already offering the public, educational, or govern-
9 mental programming under paragraph (4), to the
10 video service provider’s subscribers, or any public,
11 educational, or governmental programming produced
12 by or for the franchising authority and carried by
13 the video service provider pursuant to this section.

14 “(4) INTERCONNECTION; COST-SHARING.—Un-
15 less 2 video service providers otherwise agree to the
16 terms for interconnection and cost sharing, such
17 video service providers shall comply with regulations
18 prescribed by the Commission providing for—

19 “(A) the interconnection between 2 video
20 service providers in a franchise area for trans-
21 mission of public, educational, or governmental
22 programming, without material degradation in
23 signal quality or functionality; and

1 “(B) the reasonable allocation of the costs
2 of such interconnection between such video
3 service providers.

4 “(5) DISPLAY OF PROGRAM INFORMATION.—
5 The video service provider shall display the program
6 information for public, educational, or governmental
7 programming in any print or electronic program
8 guide in the same manner in which it displays pro-
9 gram information for other video programming in
10 the franchise area. The video service provider shall
11 not omit public, educational, or governmental pro-
12 gramming from any navigational device, guide, or
13 menu containing other video programming that is
14 available to subscribers in the franchise area.”.

15 **SEC. 334. SERVICES, FACILITIES, AND EQUIPMENT.**

16 Section 623 of title VI, as redesignated by section
17 332, is amended—

18 (1) by striking subsections (a), (b), (c), (e), and
19 (h) and redesignating subsections (d), (f), (g), and
20 (i) as subsections (a) through (d), respectively; and

21 (2) by inserting “or wire” after “cable” in sub-
22 section (d), as redesignated.

23 **SEC. 337. SHARED FACILITIES.**

24 Part III of title VI (47 U.S.C. 541 et seq.) is amend-
25 ed—

1 (1) by striking section 627 and redesignating
2 sections 628 (after its amendment by section 402)
3 and 629 as sections 626 and 627, respectively; and
4 (2) by adding at the end the following:

5 **“SEC. 628. ACCESS TO PROGRAMMING FOR SHARED FACILI-**
6 **TIES.**

7 “(a) IN GENERAL.—A video service programming
8 vendor in which a video service provider has an attrib-
9 utable interest may not deny a video service provider with
10 a franchise under this title access to video programming
11 solely because that video service provider uses a headend
12 for its video service system that is also used, under a
13 shared ownership or leasing agreement, as the headend
14 for another video service system.

15 “(b) VIDEO SERVICE PROGRAMMING VENDOR DE-
16 FINED.—The term ‘video service programming vendor’
17 means a person engaged in the production, creation, or
18 wholesale distribution for sale of video programming that
19 is primarily intended for direct receipt by video service
20 providers for retransmission to their video service sub-
21 scribers.”.

22 **SEC. 338. CONSUMER PROTECTION AND CUSTOMER SERV-**
23 **ICE.**

24 Section 632 (47 U.S.C. 552) is amended to read as
25 follows:

1 **“SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERV-**
2 **ICE.**

3 “(a) REGULATIONS.—

4 “(1) IN GENERAL.—Not later than 120 days
5 after the date of enactment of the Video Competition
6 and Savings for Consumers Act of 2006, the Com-
7 mission, after receiving comments from interested
8 parties, including franchising authorities and con-
9 sumer representatives, shall promulgate regulations,
10 which may include penalties, with respect to cus-
11 tomer service and consumer protection requirements
12 for video service providers.

13 “(2) EFFECTIVE DATE OF REGULATIONS.—The
14 regulations required by subsection (a) shall take ef-
15 fect 60 days after the date on which a final rule is
16 promulgated by the Commission.

17 “(b) STATE COMMISSION AUTHORITY.—A State com-
18 mission shall have the authority to enforce regulations
19 promulgated under subsection (a).

20 “(c) FRANCHISING AUTHORITY STANDING.—A fran-
21 chising authority shall have standing to file a complaint,
22 otherwise initiate an enforcement proceeding, or intervene
23 in a proceeding on behalf of consumers in its franchise
24 area under the regulations promulgated under subsection
25 (a).”.

1 **SEC. 339. REDLINING.**

2 Part IV of title VI (47 U.S.C. 551 et seq.) is amend-
3 ed by adding at the end the following:

4 **“SEC. 642. REDLINING.**

5 “(a) IN GENERAL.—A video service provider may not
6 deny access to its video service to any group of potential
7 residential video service subscribers because of the income,
8 race, or religion of that group.

9 “(b) ENFORCEMENT.—This section shall be enforced
10 by the Commission through a complaint-initiated adju-
11 dication process. A complaint may be filed by a resident
12 of the franchising area who is aggrieved by a violation of
13 subsection (a) or by a franchising authority on behalf of
14 residents of its franchise area.

15 “(c) REMEDIES.—If the Commission determines that
16 a video service provider has violated subsection (a), it—

17 “(1) shall ensure that the video service provider
18 extends access to any group denied access in viola-
19 tion of subsection (a);

20 “(2) may assess a civil penalty in such amount
21 as may be authorized under State law for the fran-
22 chising area in which the violation occurred for vio-
23 lation of its antidiscrimination laws; and

24 “(3) may revoke a video service provider’s fran-
25 chise to provide video services if it determines, after
26 notice and an opportunity for a hearing, that the

1 video service provider has willfully and repeatedly
2 violated this section.”.

3 **Subtitle C—Miscellaneous and**
4 **Conforming Amendments**

5 **SEC. 351. MISCELLANEOUS AMENDMENTS.**

6 (a) MUNICIPAL OPERATORS.—Section 621(f) (47
7 U.S.C. 541(f)) is amended to read as follows:

8 “(f) MUNICIPAL OPERATORS.—No provision of this
9 title shall be construed to prohibit a local or municipal
10 authority that is also, or is affiliated with, a franchising
11 authority from operating as a multichannel video pro-
12 gramming distributor in the franchise area, notwith-
13 standing the granting of one or more franchises by the
14 franchising authority.”.

15 (b) PROCEDURE.—Section 622(b) (47 U.S.C.
16 542(b)), as amended by section 331(a) of this Act, is fur-
17 ther amended—

18 (1) by redesignating paragraphs (3) and (4) as
19 paragraphs (4) and (5), respectively; and

20 (2) by inserting after paragraph (2) the fol-
21 lowing:

22 “(3) REQUIRED SHOWING IN LITIGATION.—In
23 any lawsuit challenging the amount of the franchise
24 fee imposed under this subsection, the franchising
25 authority shall be required to demonstrate that the

1 rate structure reflects all costs of the franchise
2 fees.”.

3 (c) SUNSET.—Section 626(c)(5) (47 U.S.C. 546), as
4 redesignated by section 334, is amended—

5 (1) by striking “10 years after the date of en-
6 actment of this section,” and inserting “on October
7 5, 2012,”; and

8 (2) by striking “last year of such 10-year pe-
9 riod,” and inserting “12-month period ending on
10 that date,”.

11 (d) UPDATING.—Section 613 is amended—

12 (1) by striking “July 1, 1984,” in subsection
13 (g) and inserting “the date of enactment of the
14 Communications, Consumer’s Choice, and
15 Broadband Deployment of 2006”; and

16 (2) by striking subsection (a) and redesignating
17 subsections (c) through (h) as subsections (a)
18 through (f), respectively.

19 (e) REPEAL.—Section 617 (47 U.S.C. 537) is re-
20 pealed.

21 (f) ENFORCEMENT.—Section 634(i) (47 U.S.C.
22 554(i)) is amended—

23 (1) by striking paragraph (1); and

24 (2) by redesignating paragraphs (2) and (3) as
25 paragraphs (1) and (2), respectively.

1 (g) RESTRUCTURING PART IV.—Part IV of title VI
2 (47 U.S.C. 551 et seq.) is amended—

3 (1) by striking sections 635A, 636, and 637;
4 and

5 (2) by redesignating sections 638, 639, 640,
6 641, and 642 (as added by section 339 of this Act)
7 as sections 636, 637, 638, 639, and 640 respec-
8 tively.

9 (h) CONFORMING AMENDMENTS FOR RETRANS-
10 MISSION.—

11 (1) Section 325(b) (47 U.S.C. 325(b)) is
12 amended—

13 (A) by striking “cable system” in para-
14 graph (1) and inserting “video service pro-
15 vider”; and

16 (B) by inserting “The term ‘video service
17 provider’ has the meaning given it in section
18 602(25) of this Act.” after “title.” in the mat-
19 ter following subparagraph (E) of paragraph
20 (2).

21 (2) Section 336(b) (47 U.S.C. 336(b)) is
22 amended by striking “section 614 or 615 or be
23 deemed a multichannel video programming dis-
24 tributor for purposes of section 628;” and inserting
25 “section 614 or 615;”.

1 **Subtitle D—Effective Dates and**
2 **Transition Rules.**

3 **SEC. 381. EFFECTIVE DATES; PHASE-IN.**

4 (a) IN GENERAL.—

5 (1) 6-MONTH DELAY.—Except as provided in
6 paragraph (2), the amendments made by this Act
7 (the Video Competition and Savings for Consumers
8 Act of 2006) shall take effect 180 days after the
9 date of enactment of this Act.

10 (2) INITIATION OF CERTAIN PROCEEDINGS.—

11 Notwithstanding paragraph (1), the Federal Com-
12 munications Commission shall initiate any pro-
13 ceeding required by title VI of the Communications
14 Act of 1934, as amended by this Act, or made nec-
15 essary by such amendment as soon as practicable
16 after the date of enactment of this Act.

17 (b) APPLICATION TO EXISTING FRANCHISE AGREE-
18 MENTS.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the provisions of title VI of the Commu-
21 nications Act of 1934, as amended by this Act, shall
22 not apply to a franchise agreement in effect on the
23 date of enactment of this Act between a franchising
24 authority and a video service provider before the ex-
25 piration date of the agreement, as determined with-

1 out regard to any renewal or extension of the agree-
2 ment. The provisions of title VI of that Act, as in
3 effect on the day before the date of enactment of
4 this Act shall continue to apply to any such fran-
5 chise agreement as provided by subsection (c) until
6 the earlier of—

7 (A) the expiration date of the agreement;

8 or

9 (B) that date on which a new franchise
10 agreement that replaces the existing franchise
11 agreement takes effect.

12 (2) COMPETITION TRIGGER.—

13 (A) NOTIFICATION OF EXISTING
14 FRANCHISEE REQUIRED.—If a franchising au-
15 thority receives an application from a video
16 service provider to provide video service in an
17 area in which cable service is provided under an
18 existing franchise agreement, it shall notify any
19 cable operator providing cable service in that
20 area.

21 (B) NEW FRANCHISE AGREEMENT SUPER-
22 SEDES EXISTING AGREEMENT.—Upon receipt of
23 notice under subparagraph (A), a cable oper-
24 ator may submit an application for a franchise
25 under section 603 of the Communications Act

1 of 1934, as amended by this Act. When the
2 franchise is granted—

3 (i) the terms and conditions of the
4 new franchise agreement supersede the ex-
5 isting franchise agreement; and

6 (ii) the provisions of title VI of the
7 Communications Act of 1934, as amended
8 by this Act, shall apply.

9 (c) LIMITED APPLICATION OF OLD TITLE VI.—

10 (1) IN GENERAL.—Except as provided in sub-
11 section (b) or otherwise explicitly provided in new
12 title VI, the provisions of old title VI (and all regula-
13 tions, rulings, waivers, orders, and franchise agree-
14 ments under old title VI) shall continue in effect
15 after the date of enactment of this Act with respect
16 to any cable operator to which they applied before
17 that date until the earlier of—

18 (A) the expiration date of the franchise
19 agreement under which the cable operator was
20 operating on the date of enactment of this Act;
21 or

22 (B) that date on which a new franchise
23 agreement takes effect that replaces a cable op-
24 erator's franchise agreement described in sub-
25 paragraph (A).

1 (2) DEFINITIONS.—In this subsection:

2 (A) NEW TITLE VI.—The term “new title
3 VI” means title VI of the Communications Act
4 of 1934 (47 U.S.C. 521 et seq.) as amended by
5 this Act.

6 (B) OLD TITLE VI.—The term “old title
7 VI” means title VI of the Communications Act
8 of 1934 (47 U.S.C. 521 et seq.) as in effect on
9 the day before the date of enactment of this
10 Act.

11 **TITLE IV—VIDEO CONTENT**

12 **SEC. 401. SHORT TITLE.**

13 This title may be cited as the “Video Content Act”.

14 **Subtitle A—Sports Freedom**

15 **SEC. 401. SHORT TITLE.**

16 This subtitle may be cited as the “Sports Freedom
17 Act of 2006”.

18 **SEC. 402. DEVELOPMENT OF COMPETITION AND DIVERSITY**

19 **IN VIDEO PROGRAMMING DISTRIBUTION.**

20 (a) IN GENERAL.—Section 628 (47 U.S.C. 548), be-
21 fore its redesignation by section 337 of this Act, is amend-
22 ed to read as follows:

1 **“SEC. 628. DEVELOPMENT OF COMPETITION AND DIVER-**
2 **SITY IN VIDEO PROGRAMMING DISTRIBUTION.**
3 **“**

4 **(a) PURPOSE.—**The purpose of this section is—

5 “(1) to promote the public interest, conven-
6 ience, and necessity by increasing competition and
7 diversity in the multichannel video programming
8 market;

9 “(2) to increase the availability of MVPD pro-
10 gramming and satellite broadcast programming to
11 persons in rural and other areas not currently able
12 to receive such programming; and

13 “(3) to spur the development of communica-
14 tions technologies.

15 **“(b) PROHIBITION.—**It is unlawful for an
16 MVPD, an MVPD programming vendor in which an
17 MVPD has an attributable interest, or a satellite
18 broadcast programming vendor to engage in unfair
19 methods of competition or unfair or deceptive acts or
20 practices, the purpose or effect of which is to hinder
21 significantly or to prevent any MVPD from pro-
22 viding MVPD programming or satellite broadcast
23 programming to subscribers or consumers.

24 **“(c) REGULATIONS REQUIRED.—**

25 **“(1) PROCEEDING REQUIRED.—**Not later than
26 180 days after the date of enactment of the Sports

1 Freedom Act of 2006, the Commission shall pre-
2 scribe regulations to specify particular conduct that
3 is prohibited by subsection (b), in order to pro-
4 mote—

5 “(A) the public interest, convenience, and
6 necessity by increasing competition and diver-
7 sity in the multichannel video programming
8 market; and

9 “(B) the continuing development of com-
10 munications technologies.

11 “(2) MINIMUM CONTENTS OF REGULATION.—

12 The regulations required under paragraph (1)
13 shall—

14 “(A) establish effective safeguards to pre-
15 vent an MVPD which has an attributable inter-
16 est in an MVPD programming vendor or a sat-
17 ellite broadcast programming vendor from un-
18 duly or improperly influencing the decision of
19 such vendor to sell, or the prices, terms, and
20 conditions of sale of, MVPD programming or
21 satellite broadcast programming to any unaffili-
22 ated MVPD;

23 “(B) prohibit discrimination by an MVPD
24 programming vendor in which an MVPD has an
25 attributable interest or by a satellite broadcast

1 programming vendor in the prices, terms, and
2 conditions of sale or delivery of MVPD pro-
3 gramming or satellite broadcast programming
4 among or between cable systems, cable opera-
5 tors, or other MVPDs, or their agents or buy-
6 ing groups, except that an MVPD programming
7 vendor in which an MVPD has an attributable
8 interest or such a satellite broadcast program-
9 ming vendor shall not be prohibited from—

10 “(i) imposing reasonable requirements
11 for—

12 “(I) creditworthiness;

13 “(II) offering of service; and

14 “(III) financial stability and
15 standards regarding character and
16 technical quality;

17 “(ii) establishing different prices,
18 terms, and conditions to take into account
19 actual and reasonable differences in the
20 cost of creation, sale, delivery, or trans-
21 mission of MVPD programming or satellite
22 broadcast programming;

23 “(iii) establishing different prices,
24 terms, and conditions which take into ac-
25 count economies of scale, cost savings, or

1 other direct and legitimate economic bene-
2 fits reasonably attributable to the number
3 of subscribers served by the distributor; or
4 “(iv) entering into an exclusive con-
5 tract that is permitted under subparagraph
6 (D);

7 “(C) prohibit practices, understandings,
8 arrangements, and activities, including exclusive
9 contracts for MVPD programming or satellite
10 broadcast programming between an MVPD and
11 an MVPD programming vendor or satellite
12 broadcast programming vendor, that prevent an
13 MVPD from obtaining such programming from
14 any MVPD programming vendor in which an
15 MVPD has an attributable interest or any sat-
16 ellite broadcast programming vendor in which
17 an MVPD has an attributable interest for dis-
18 tribution to persons in areas not served by an
19 MVPD as of the date of enactment of the
20 Sports Freedom Act of 2006; and

21 “(D) with respect to distribution to per-
22 sons in areas served by an MVPD, prohibit ex-
23 clusive contracts for MVPD programming or
24 satellite broadcast programming between an
25 MVPD and an MVPD programming vendor in

1 which an MVPD has an attributable interest or
2 a satellite broadcast programming vendor in
3 which an MVPD has an attributable interest,
4 unless the Commission determines (in accord-
5 ance with paragraph (4)) that such contract is
6 in the public interest.

7 “(E) PREEMPTION AND RESCHEDULING
8 OF CHILDREN’S PROGRAMS.—Nothing in this
9 section shall be construed in a manner that lim-
10 its the discretion of a licensee of a local tele-
11 vision broadcast station to preempt or to re-
12 schedule programming specifically designed to
13 serve educational and informational needs of
14 children in order to air timely coverage of news
15 or sporting events.

16 “(3) LIMITATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(5) SUNSET PROVISION.—The prohibition re-
15 quired by paragraph (2)(D) shall cease to be effec-
16 tive 10 years after the date of enactment of the
17 Sports Freedom Act of 2006, unless the Commission
18 finds, in a proceeding conducted during the last year
19 of such 10-year period, that such prohibition con-
20 tinues to be necessary to preserve and protect com-
21 petition and diversity in the distribution of video
22 programming.

23 “(d) ADJUDICATORY PROCEEDING.—

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

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

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

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

19 “(e) REMEDIES FOR VIOLATIONS.—

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

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

5 “(f) PROCEDURES.—

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

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

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

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

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

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

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

4 “(h) EXEMPTIONS FOR PRIOR CONTRACTS.—

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

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

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

19 “(2) LIMITATION ON RENEWALS.—

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

1 dom Act of 2006 shall not be exempt under
2 paragraph (1).

3 “(B) MVPD PROGRAMMING CONTRACTS.—
4 A contract pertaining to MVPD programming
5 that is not satellite cable programming that was
6 entered into on or before July 1, 2003, but that
7 is renewed or extended after the date of enact-
8 ment of the Sports Freedom Act of 2006 shall
9 not be exempt under paragraph (1).

10 “(i) DEFINITIONS.—In this section:

11 “(1) MVPD.—The term “MVPD” means mul-
12 tichannel video programming distributor.

13 “(2) MVPD PROGRAMMING.—The term
14 “MVPD programming” includes the following:

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

20 “(B) ADDITIONAL PROGRAMMING.—

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

1 Sports Freedom Act of 2006, as of the
2 time of such rulemaking, of a type that
3 is—

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

9 “(aa) digital or analog;

10 “(bb) compressed or
11 uncompressed;

12 “(cc) encrypted or
13 unencrypted; or

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

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

22 “(ii) CONSIDERATIONS.—In making
23 the determination under clause (i), the
24 Commission shall consider the effect of
25 technologies and services that combine dif-

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

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

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

19 “(I) the purpose of this section;

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

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

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

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

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

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

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

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

18 “(5) SATELLITE BROADCAST PROGRAMMING
19 VENDOR.—The term ‘satellite broadcast program-
20 ming vendor’ means a fixed service satellite carrier
21 that provides satellite broadcast programming.

22 “(6) SATELLITE CABLE PROGRAMMING.—The
23 term ‘satellite cable programming’ has the same
24 meaning as in section 705, except that such term
25 does not include satellite broadcast programming.

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

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

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

9 “(j) COMMON CARRIERS.—

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

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

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

1 (b) EFFECTIVE DATE.—Notwithstanding section 381
2 of this Act, the amendment made by subsection (a) shall
3 take effect on the date of enactment of this Act.

4 **SEC. 403. REGULATIONS.**

5 Not later than 120 days after the date of enactment
6 of this Act, the Commission shall prescribe such regula-
7 tions as may be necessary to implement section 628 of
8 the Communications Act of 1934 (47 U.S.C. 548) as
9 amended by section 402(a).

10 **Subtitle B—National Satellite**

11 **SEC. 431. AVAILABILITY OF CERTAIN LICENSED SERVICES**

12 **IN NONCONTIGUOUS STATES.**

13 Notwithstanding any other provision of law, before
14 the Federal Communications Commission grants a license
15 under the Communications Act of 1934 (47 U.S.C. 151
16 et seq.) to a satellite carrier (as defined in section
17 338(k)(5) of that Act (47 U.S.C. 338(k)(5))), it shall en-
18 sure that, to the greatest extent technically feasible, if the
19 license is granted the service provided by that carrier pur-
20 suant to the license will be available to subscribers in the
21 noncontiguous States to the same extent as that service
22 is available to subscribers in the contiguous States.

1 **Subtitle C—Video and Audio Flag**

2 **SEC. 451. SHORT TITLE.**

3 This subtitle may be cited as the “Digital Content
4 Protection Act of 2006”.

5 **SEC. 452. DIGITAL VIDEO BROADCASTING.**

6 Part I of title III (47 U.S.C. 301 et seq.) is amended
7 by adding at the end the following:

8 **“SEC. 342. PROTECTION OF DIGITAL VIDEO BROADCASTING**
9 **CONTENT.**

10 “(a) IN GENERAL.—Within 30 days after the date
11 of enactment of the Digital Content Protection Act of
12 2006, the Commission shall initiate, and within 6 months
13 after that date conclude, a proceeding—

14 “(1) to implement its Report and Order in the
15 matter of Digital Broadcast Content Protection,
16 FCC 03-273 and its Report and Order in the matter
17 of Digital Output Protection Technology and Re-
18 cording Method Certifications, FCC 04-193; and

19 “(2) to modify, if necessary, such Reports and
20 Orders to meet the requirements of subsection (b) of
21 this section.

22 “(b) REQUIREMENTS.—In the regulations promul-
23 gated under this section, the Commission shall permit
24 transmission of—

1 “(1) short excerpts of broadcast digital tele-
2 vision content over the Internet; and

3 “(2) broadcast digital television content over a
4 home network or other localized network accessible
5 to a limited number of devices connected to such
6 network; or

7 “(C) broadcast digital television content
8 over the Internet for distance learning pur-
9 poses;

10 “(2) permit government bodies or accredited
11 nonprofit educational institutions to use copyrighted
12 work in distance education courses pursuant to the
13 Technology, Education, and Copyright Harmoni-
14 zation Act of 2002 and the amendments made by
15 that Act;

16 “(3) permit the redistribution of news and pub-
17 lic affairs programming (not including sports) in
18 which the primary commercial value depends on
19 timeliness as determined by the broadcaster or
20 broadcasting network; and

21 “(4) require that any authorized redistribution
22 control technology and any authorized recording
23 method technology approved by the Commission
24 under this Section that is publicly offered to licens-

1 ees, be licensed on reasonable and nondiscriminatory
2 terms and conditions.

3 “(c) REVIEW OF DETERMINATIONS.—The Commis-
4 sion may review any such determination described in sub-
5 section (b)(3) by a broadcaster or broadcasting network
6 if the Commission receives a bona fide complaint alleging,
7 or otherwise has reason to believe, that the determination
8 is inconsistent with the requirements of that subsection
9 or the regulations promulgated thereunder.

10 “(d) EFFECTIVE DATE OF REGULATIONS.—Regula-
11 tions promulgated under this section shall take effect 12
12 months after the date on which the Commission issues a
13 final rule under this section.”.

14 **SEC. 453. DIGITAL AUDIO BROADCASTING.**

15 Part I of title III (47 U.S.C. 301 et seq.), as amended
16 by section 452, is further amended by adding at the end
17 the following:

18 **“SEC. 343. PROTECTION OF DIGITAL AUDIO BROADCASTING**

19 **CONTENT.**

20 “(a) IN GENERAL.—Subject to section 454(d)(2) of
21 the Digital Content Protection Act of 2006, the Commis-
22 sion may promulgate regulations governing the indiscrimi-
23 nate redistribution of audio content with respect to—

24 “(1) digital radio broadcasts;

25 “(2) satellite digital radio transmissions; and

1 “(3) digital radios.

2 “(b) MONITORING ORGANIZATIONS.—The Commis-
3 sion shall ensure that a performing rights society or a me-
4 chanical rights organization, or any entity acting on behalf
5 of such a society or organization, is granted a license for
6 free or for a de minimis fee to cover only the reasonable
7 costs to the licensor of providing the license, and on rea-
8 sonable, nondiscriminatory terms and conditions, to access
9 and retransmit as necessary any content contained in such
10 transmissions protected by content protection or similar
11 technologies, if such licenses are for purposes of carrying
12 out the activities of such society, organization, or entity
13 in monitoring the public performance or other uses of
14 copyrighted works, and such society, organization, or enti-
15 ty employs reasonable methods to protect any such content
16 accessed from further distribution.”.

17 **SEC. 454. DIGITAL AUDIO REVIEW BOARD.**

18 (a) ESTABLISHMENT.—The Federal Communications
19 Commission shall establish an advisory committee, to be
20 known as the Digital Audio Review Board,

21 (b) MEMBERSHIP.—Members of the Board shall be
22 appointed by the chairman of the Commission and shall
23 include representatives nominated by—

24 (1) the information technology industry;

25 (2) the software industry;

- 1 (3) the consumer electronics industry;
- 2 (4) the radio broadcasting industry;
- 3 (5) the satellite radio broadcasting industry;
- 4 (6) the cable industry;
- 5 (7) the audio recording industry;
- 6 (8) the music publishing industry;
- 7 (9) performing rights societies, including—
 - 8 (A) the American Society of Composers,
 - 9 Authors and Publishers;
 - 10 (B) Broadcast Music, Inc.; and
 - 11 (C) SESAC, Inc.;
- 12 (10) public interest organizations;
- 13 (11) organizations representing recording art-
- 14 ists, performers and musicians; and
- 15 (12) any other group that the Commission de-
- 16 termines will be directly affected by adoption of
- 17 broadcast flag technology regulations.

18 (c) DUTY.—

19 (1) IN GENERAL.—Within 1 year after the date
20 of enactment of this Act, the Board shall submit to
21 the Commission a proposed regulation under section
22 343 of the Communications Act of 1934 (47 U.S.C.
23 343) that—

24 (A) represents a consensus of the members
25 of the Board; and

1 (B) are consistent with fair use principles.

2 (2) EXTENSION OF 1-YEAR PERIOD.—The Com-
3 mission may extend, for good cause shown, the 1-
4 year period described in paragraph (1) for a period
5 of not more than 6 months, if the Commission deter-
6 mines that—

7 (A) substantial progress has been made by
8 the Board toward the development of a pro-
9 posed regulation;

10 (B) the members of the Board are con-
11 tinuing to negotiate in good faith; and

12 (C) there is a reasonable expectation that
13 the Board will draft and submit a proposed reg-
14 ulation before the expiration of the extended pe-
15 riod of time.

16 (d) COMMISSION TREATMENT OF PROPOSED REGU-
17 LATION.—

18 (1) DRAFT REGULATION.—Within 30 days after
19 the Commission receives a proposed regulation from
20 the Board under this section the Commission shall
21 initiate a rulemaking proceeding to implement the
22 proposed regulation.

23 (2) DEFERENCE; DEADLINE.—If the Board
24 submits a proposed regulation under this section the
25 Commission, in promulgating a regulation under sec-

1 tion 343 of the Communications Act of 1934,
2 shall—

3 (A) give substantial deference to the pro-
4 posed regulation submitted by the Board; and

5 (B) issue a final rule not later than 6
6 months after the date on which the proceeding
7 was initiated.

8 (3) COMMISSION ACTION IF NO BOARD AC-
9 TION.—If the Board does not submit a proposed
10 regulation to the Commission within 1 year after the
11 date of enactment of this Act, plus any extension
12 granted by the Commission under subsection (c), the
13 Commission may not promulgate regulations under
14 section 343 of the Communications Act of 1934, but
15 shall submit recommendations to the Senate Com-
16 mittee on Commerce, Science, and Transportation
17 and the House Committee on Energy and Com-
18 merce.

19 (e) ADMINISTRATIVE PROVISIONS.—

20 (1) MEETINGS.—The Board shall meet at the
21 call of the Chairman of the Commission.

22 (2) EXECUTIVE DIRECTOR.The Chairman of
23 the Commission may, without regard to civil service
24 laws and regulations, appoint and terminate an Ex-
25 ecutive Director and such other additional personnel

1 as may be necessary to enable the Board to perform
2 its duties. The Executive Director shall be com-
3 pensated at a rate not to exceed the rate of pay pay-
4 able for level V of the Executive Schedule under sec-
5 tion 5316 of title 5, United States Code.

6 (3) TEMPORARY AND INTERMITTENT SERV-
7 ICES.—In carrying out its duty, the Board may pro-
8 cure temporary and intermittent services of consult-
9 ants and experts under section 3109(b) of title 5,
10 United States Code, at rates for individuals which
11 do not exceed the daily equivalent of the annual rate
12 of basic pay prescribed for level V of the Executive
13 Schedule under section 5316 of such title.

14 (4) DETAIL OF GOVERNMENT EMPLOYEES.—
15 Upon request of the Board, the head of any Federal
16 agency may detail any Federal Government em-
17 ployee to the Board without reimbursement, and
18 such detail shall be without interruption or loss of
19 civil service status or privilege.

20 (5) ADMINISTRATIVE SUPPORT.—Notwith-
21 standing section 7(c) of the Federal Advisory Com-
22 mittee Act (5 U.S.C. App.), the Commission shall
23 provide the Board with such administrative and sup-
24 portive services as are necessary to ensure that the
25 Board can carry out its functions.

1 (6) TERMINATION.—The Board shall terminate
2 on the date on which it submits a proposed regula-
3 tion to the Commission or at the discretion of the
4 Chairman of the Federal Communications Commis-
5 sion.

6 **TITLE V—MUNICIPAL**
7 **BROADBAND**

8 **SEC. 501. SHORT TITLE.**

9 This title may be cited as the “Community
10 Broadband Act”.

11 **SEC. 502. STATE REGULATION OF MUNICIPAL BROADBAND**
12 **NETWORKS.**

13 Section 706 of the Telecommunications Act of 1996
14 (47 U.S.C. 157 note) is amended—

15 (1) by redesignating subsection (c) as sub-
16 section (h);

17 (2) by inserting after subsection (b) the fol-
18 lowing:

19 “(c) LOCAL GOVERNMENT PROVISION OF ADVANCED
20 COMMUNICATIONS CAPABILITY AND SERVICES.—No State
21 or local government statute, regulation, or other State or
22 local government legal requirement may prohibit or have
23 the effect of prohibiting any public provider from pro-
24 viding, to any person or any public or private entity, ad-
25 vanced communications capability or any service that uti-

1 lizes the advanced communications capability provided by
2 such provider.

3 “(d) SAFEGUARDS.—

4 “(1) ANTIDISCRIMINATION.—To the extent any
5 public provider regulates competing providers of ad-
6 vanced communications capability, it shall apply its
7 ordinances and rules and policies, including those re-
8 lating to the use of public rights-of-way, permitting,
9 performance bonding and reporting, without dis-
10 crimination in favor of itself or any advanced com-
11 munications capability provider that it owns or is af-
12 filiated with, as compared to other providers of such
13 capability or services.

14 “(2) APPLICATION OF GENERAL LAWS.—A pub-
15 lic provider may not provide advanced communica-
16 tions capability to the public unless the provision of
17 such capability by that public provider is subject to
18 the same laws and regulations that would apply if
19 the advanced communications capability were being
20 provided by a nongovernmental entity.

21 “(3) OPEN ACCESS TO NON-GOVERNMENTAL
22 ENTITIES.—If a public provider initiates a project to
23 provide advanced communications capability to the
24 public, it shall grant to a requesting non-govern-
25 mental entity the right to place similar facilities in

1 the same conduit, trenches, and locations as the
2 public provider for concurrent or future use under
3 the same conditions as the public provider. A public
4 provider may limit, or refuse to grant, such a right
5 to a requesting non-governmental entity with respect
6 to any such conduit, trench, or location for public
7 safety reasons.

8 “(4) ENFORCEMENT.—Paragraphs (1), (2), and
9 (3) preempt any State or local law, regulation, rule,
10 or practice that is inconsistent with the requirements
11 of those paragraphs. If the Commission determines,
12 after notice and an opportunity for a hearing, that
13 a State or local government is engaging in any act
14 or practice that violates paragraph (1), (2), or (3),
15 the Commission shall take such action as may be
16 necessary to enjoin or restrain the State or local
17 government from engaging in that act or practice.

18 “(e) PUBLIC-PRIVATE PARTNERSHIPS ENCOUR-
19 AGED.—If a public provider initiates a project to provide
20 advanced communications capability to the public through
21 a public-private partnership, the public provider shall pub-
22 lish a request for proposals in a publication of general cir-
23 culation in the community in which the project is to be
24 implemented and solicit bids through an open bid process.

1 “(f) PROTECTION AGAINST UNDUE GOVERNMENT
2 COMPETITION WITH PRIVATE SECTOR.—

3 “(1) NOTICE AND OPPORTUNITY TO BID RE-
4 QUIRED.—If a public provider decides not to initiate
5 a project to provide advanced communications capa-
6 bility to the public through a public-private partner-
7 ship, then, before the public provider may provide
8 advanced communications capability to the public, it
9 shall—

10 “(A) publish notice of its intention in
11 media generally available to the public in the
12 area in which it intends to provide such capa-
13 bility; and

14 “(B) provide an opportunity for commer-
15 cial enterprises to bid for the rights to provide
16 such capability during the 30-day period fol-
17 lowing publication of the notice.

18 “(2) NOTICE REQUIREMENTS.—The public pro-
19 vider shall include in the notice required by para-
20 graph (1) a description of the proposed scope of the
21 advanced communications capability to be provided,
22 including—

23 “(A) the services to be provided (including
24 network capabilities);

25 “(B) the coverage area;

1 “(C) service tiers and pricing; and

2 “(D) any proposal for providing advanced
3 communications capability to low-income areas,
4 or other demographically or geographically de-
5 fined areas, that are not the same as the terms,
6 service, pricing, or tiers applicable in other por-
7 tions of the coverage area.

8 “(3) PRIVATE SECTOR RIGHT OF FIRST RE-
9 FUSAL.—The public provider may proceed with the
10 project only if, during the 30-day period, no private
11 sector entity submits a bid to provide equivalent ad-
12 vanced communications capability of the same scope
13 for the same or lower cost to consumers, as deter-
14 mined by a neutral third party, and demonstrates
15 the requisite technical and financial ability to pro-
16 vide that capability. The neutral third party shall be
17 selected by the public provider, and the private sec-
18 tor entity shall bear the costs of using a neutral
19 third party.

20 “(4) APPLICATION TO EXISTING ARRANGE-
21 MENTS AND PENDING PROPOSALS.—This subsection
22 does not apply to—

23 “(A) any contract or other arrangement
24 under which a public provider is providing ad-

1 vanced communications capability to the public
2 as of April 20, 2006; or

3 “(B) any public provider proposal to pro-
4 vide advanced communications capability to the
5 public that, as of April 20, 2006—

6 “(i) is in the request-for-proposals
7 process;

8 “(ii) is in the process of being built;
9 or

10 “(iii) has been approved by ref-
11 erendum but is the subject of a lawsuit
12 brought before March 1, 2006.

13 “(g) PUBLIC SAFETY EXEMPTION.—Subsections (d),
14 (e), and (f) of this section do not apply when a public
15 provider provides advanced communications capabilities
16 other than to the public or to such classes of users as ef-
17 fectively to be available to the public.”;

18 (3) by adding at the end of subsection (h), as
19 redesignated, the following:

20 “(3) PUBLIC PROVIDER.—The term ‘public pro-
21 vider’ means a State or political subdivision thereof,
22 any agency, authority, or instrumentality of a State
23 or political subdivision thereof, or an Indian tribe
24 (as defined in section 4(e) of the Indian Self-Deter-
25 mination and Education Assistance Act (25 U.S.C.

1 450b(e)), or any entity that is owned, controlled, or
2 otherwise affiliated with a State, political subdivision
3 thereof, agency, authority, or instrumentality, or In-
4 dian tribe.”; and

5 (4) by striking “CAPABILITY.—” in paragraph
6 (1) of subsection (h), as redesignated, and inserting
7 “CAPABILITY; ADVANCED COMMUNICATIONS CAPA-
8 BILITY.—”;

9 (5) by striking “is defined” in paragraph (2) of
10 subsection (h), as redesignated, and inserting “and
11 ‘advanced communications capability’ mean”; and

12 (6) by striking “as” in that paragraph.

13 **TITLE VI—WIRELESS**
14 **INNOVATION NETWORKS**

15 **SEC. 601. SHORT TITLE.**

16 This title may be cited as the “Wireless Innovation
17 Act of 2006” or the “WIN Act of 2006”.

18 **SEC. 602. ELIGIBLE TELEVISION SPECTRUM MADE AVAIL-**
19 **ABLE FOR WIRELESS USE.**

20 Part I of title III (47 U.S.C. 301 et seq.), as amended
21 by section 453 of this Act, is further amended by adding
22 at the end the following:

1 **“SEC. 344. ELIGIBLE BROADCAST TELEVISION SPECTRUM**
2 **MADE AVAILABLE FOR WIRELESS USE.**

3 “(a) IN GENERAL.—Effective 270 days after the date
4 of enactment of the WIN Act of 2006, a certified unli-
5 censed device may use eligible broadcast television fre-
6 quencies in a manner that protects licensees from harmful
7 interference.

8 “(b) COMMISSION TO FACILITATE USE.—Within 270
9 days after the date of enactment of that Act, the Commis-
10 sion shall adopt minimal technical and device rules in ET
11 Docket No. 04–186 to facilitate the efficient use of eligible
12 broadcast television frequencies by certified unlicensed de-
13 vices, which shall include rules and procedures—

14 “(1) to protect licensees from harmful inter-
15 ference from certified unlicensed devices;

16 “(2) to require certification of unlicensed de-
17 vices designed to be operated in the eligible broad-
18 cast television frequencies which shall include testing
19 in a laboratory certified by the Commission that
20 demonstrates (A) compliance with the requirements
21 set forth pursuant to this paragraph and (B) that
22 such compliance effectively protects licensees from
23 harmful interference;

24 “(3) to require manufacturers of such devices
25 to include a means of disabling or modifying the de-
26 vice remotely if the Commission determines that cer-

1 tain certified unlicensed devices may cause harmful
2 interference to licensees;

3 “(4) to address immediately any complaints
4 from licensees that a certified unlicensed device
5 causes harmful interference including verification, in
6 the field, of actual harmful interference; and

7 “(5) to limit the operation or use of certified
8 unlicensed devices within any geographic area in
9 which a public safety entity is authorized to operate
10 as a primary licensee within the eligible broadcast
11 television frequencies.

12 “(c) DEFINITIONS.—In this section:

13 “(1) CERTIFIED UNLICENSED DEVICE.—The
14 term ‘certified unlicensed device’ means a device cer-
15 tified under subsection (b)(2).

16 “(2) ELIGIBLE BROADCAST TELEVISION FRE-
17 QUENCIES.—The term ‘eligible broadcast television
18 frequencies’ means the following frequencies:

19 “(A) All frequencies between 54 and 72
20 megaHertz, inclusive.

21 “(B) All frequencies between 76 and 88
22 megaHertz, inclusive.

23 “(C) All frequencies between 174 and 216
24 megaHertz, inclusive.

1 “(D) All frequencies between 470 and 608
2 megaHertz, inclusive.

3 “(E) All frequencies between 616 and 698
4 megaHertz, inclusive.

5 “(3) LICENSEE.—The term ‘licensee’ means a
6 licensee, as defined in section 3(24), that holds a li-
7 cense to operate in the eligible broadcast television
8 frequencies and is operating in such frequencies in
9 a manner that is not inconsistent with its license.”.

10 **TITLE VII—DIGITAL TELEVISION**

11 **SEC. 701. ANALOG AND DIGITAL TELEVISION SETS AND**
12 **CONVERTER BOXES; CONSUMER EDUCATION**
13 **AND REQUIREMENTS TO REDUCE THE GOV-**
14 **ERNMENT COST OF THE CONVERTER BOX**
15 **PROGRAM.**

16 (a) CONSUMER EDUCATION REQUIREMENTS.—Sec-
17 tion 330 (47 U.S.C. 330) is amended—

18 (1) by redesignating subsection (d) as sub-
19 section (e); and

20 (2) by inserting after subsection (e) the fol-
21 lowing new subsection:

22 “(d) CONSUMER EDUCATION REQUIREMENTS RE-
23 GARDING ANALOG RECEIVERS.—

24 “(1) REQUIREMENTS FOR MANUFACTURERS.—

25 The manufacturer of any analog television set manu-

1 factured in the United States or shipped in inter-
2 state commerce shall—

3 “(A) place the appropriate removable label
4 described in paragraph (4) on the screen of
5 such television set; and

6 “(B) display the consumer information re-
7 quired by paragraph (5) on the outside of the
8 retail packaging of the television set—

9 “(i) in a clear and conspicuous man-
10 ner; and

11 “(ii) in a manner that cannot be re-
12 moved.

13 “(2) REQUIREMENTS FOR IN-STORE RETAIL-
14 ERS.—Not later than 60 days after the conclusion of
15 the rulemaking proceeding required under paragraph
16 (5), each in-store retailer shall place adjacent to tele-
17 vision sets that such retailer displays for sale or
18 rent, a separate sign containing the consumer infor-
19 mation required by paragraph (5).

20 “(3) REQUIREMENTS FOR OTHER RETAIL-
21 ERS.—Not later than 60 days after the conclusion of
22 the rulemaking proceeding required under paragraph
23 (5), any retailer of television sets described in para-
24 graph (2) that sells such television sets via direct
25 mail, catalog, or electronic means, shall include in all

1 advertisements or descriptions of such television set
2 the product and the information described in para-
3 graph (4).

4 “(4) PRODUCT AND DIGITAL TELEVISION TRAN-
5 SITION INFORMATION.—The following product and
6 digital television transition information shall be dis-
7 played as a label on analog television sets, in both
8 English and Spanish:

‘CONSUMER ALERT

‘This TV only has an “analog” broadcast tuner and will require a converter box after February 17, 2009 to receive over-the-air broadcasts with an antenna because of the Nation’s transition to digital broadcasting on that date as required by Federal law. It should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.’

9 “(5) CONSUMER INFORMATION.—The consumer
10 information required by this paragraph shall—

11 “(A) be developed by the Commission in a
12 rulemaking proceeding concluded not later than
13 60 days after the date of enactment of the
14 Communications, Consumer’s Choice, and
15 Broadband Deployment of 2006;

16 “(B) clearly explain—

17 “(i) what the digital transition is;

18 “(ii) how it serves the public interest;

19 “(iii) how it will benefit public safety
20 and improve wireless services;

21 “(iv) how it may affect television view-
22 ers, including—

1 “(I) the deadline for termination
2 of analog television broadcasting;

3 “(II) the options consumers have
4 after such termination to continue to
5 receive broadcast programming;

6 “(III) the information that ana-
7 log-only television sets will continue to
8 work as before with cable and satellite
9 television systems, gaming consoles,
10 VCRs, DVD players and recorders,
11 camcorders, and similar products; and

12 “(IV) the capabilities of television
13 sets, including digital sets;

14 “(v) how the transition will affect sub-
15 scribers of multichannel video program-
16 ming distributors (as defined in section
17 602); and

18 “(vi) that consumers who have ana-
19 log-only television sets will need a con-
20 verter box in order to receive over-the-air
21 broadcast programming; and

22 “(C) include any additional information
23 the Commission deems appropriate with respect
24 to any television set.

25 “(6) COMMISSION OUTREACH.—

1 “(A) IN GENERAL.—Beginning within 1
2 month after the date of enactment of the Com-
3 munications, Consumer’s Choice, and
4 Broadband Deployment of 2006, the Commis-
5 sion shall engage in a public outreach program
6 to educate consumers about the digital tele-
7 vision transition, including the consumer infor-
8 mation described in paragraph (5).

9 “(B) WEBSITE.—The Commission shall
10 maintain and publicize a website, or an easily
11 accessible page on its website, containing such
12 consumer information as well as any links to
13 other websites the Commission determines to be
14 appropriate.

15 “(7) PUBLIC SERVICE ANNOUNCEMENTS.—
16 Each day from July 17, 2009, through February 17,
17 2009, each television broadcast licensee or permittee
18 shall broadcast 2 30-second public service announce-
19 ments at such times as the Commission may require
20 notifying the public of the digital transition and con-
21 taining the address of the website provided by the
22 Commission under paragraph (6) and such addi-
23 tional consumer information as the Commission may
24 require, including the consumer information de-
25 scribed in paragraph (5).

1 “(8) PENALTY.—In addition to any other civil
2 or criminal penalty provided by law, the Commission
3 shall issue civil forfeitures for violations of the re-
4 quirements of this subsection in an amount equal to
5 not more than 3 times the amount of the forfeiture
6 penalty established by section 503(a)(2)(A).

7 “(9) SUNSET.—The requirements of this sub-
8 section shall cease to apply to manufacturers and re-
9 tailers on April 1, 2009, unless the Commission de-
10 termines that the information required to be dis-
11 played under this subsection should continue to be
12 displayed in the public interest.”.

13 (b) DTV WORKING GROUP ON CONSUMER EDU-
14 CATION, OUTREACH, AND TECHNICAL ASSISTANCE.—

15 (1) IN GENERAL.—Within 60 days after the
16 date of enactment of this Act, the Federal Commu-
17 nications Commission shall establish an advisory
18 committee, to be known as the DTV Working
19 Group, to consult with State and local governments,
20 providers of low income assistance programs, edu-
21 cational institutions, and community groups to pro-
22 mote consumer outreach and to provide logistical as-
23 sistance to consumers, including converter box deliv-
24 ery and installation.

1 (2) MEMBERSHIP.—The Commission shall ap-
2 point to the DTV Working Group representatives of
3 groups involved with the transition to digital tele-
4 vision, including the Commission, the National Tele-
5 communications and Information Administration,
6 other Federal agencies, television broadcasters, mul-
7 tichannel video programming distributors, consumer
8 electronics manufacturers and manufacturers of pe-
9 ripheral devices, broadcast antenna and tuner manu-
10 facturers, retail providers of consumer electronics
11 equipment, consumers, and public interest groups
12 (including the American Association of Retired Per-
13 sons). Members of the DTV Working Group shall
14 serve without compensation and shall not be consid-
15 ered Federal employees by reason of their service on
16 the advisory committee.

17 (3) PURPOSES.—The purposes of the DTV
18 Working Group are—

19 (A) to advise the Commission in creating
20 and implementing a national plan to inform
21 consumers about the digital television transition
22 as required by section 330(d)(6) of the Commu-
23 nications Act of 1934 (47 U.S.C. 330(d)(6));

24 (B) to ensure that the Commission's na-
25 tional plan includes, at a minimum—

1 (i) recommended procedures for public
2 service announcements by broadcasters
3 and multichannel video programming dis-
4 tributors, toll-free information hotlines, re-
5 tail displays or notices, such as making
6 available at the point of sale for television
7 sets and equipment designed to receive
8 over-the-air broadcast television signals a
9 sufficient supply of free handbills con-
10 taining that consumer information; and

11 (ii) recommended procedures for di-
12 rect mail, billboards, and community
13 events related to the digital television tran-
14 sition;

15 (C) to ensure that the Commission's na-
16 tional plan includes a requirement that all li-
17 censed broadcasters in a designated market
18 area submit a joint plan to the Commission ad-
19 dressing the public outreach and public service
20 announcement requirements required by this
21 title to inform consumers in those areas of the
22 transition to digital television that—

23 (i) includes a description of how each
24 broadcaster will fulfill the public service
25 announcement requirements required

1 under section 330(d)(7) of the Commu-
2 nications Act of 1934 (47 U.S.C.
3 330(d)(7));

4 (ii) includes market research by each
5 broadcaster regarding projected consumer
6 demand for converter boxes in their des-
7 ignated market area; and

8 (iii) will be shared with retailers in-
9 side their designated market area so that
10 such retailers may stock the appropriate
11 amount of converter boxes to meet the
12 needs of consumers within each designated
13 market area; and

14 (D) to provide to the Commission a DTV
15 Progress Report that reflects ongoing and
16 planned efforts by the private sector, both na-
17 tionally and in various television broadcast mar-
18 kets, to inform consumers about the digital
19 transition and to minimize potential disruption
20 to consumers attributable to the transition to
21 digital broadcasting.

22 (c) REQUIREMENTS TO PROMOTE SALE OF DIGITAL
23 TELEVISIONS AND CONVERTER BOXES.—

1 (1) DIGITAL TUNER MANDATE.—Part I of title
2 III (47 U.S.C. 301 et seq.) is amended by inserting
3 after section 303 the following:

4 **“SEC. 303A. REQUIREMENTS FOR DIGITAL TELEVISION**
5 **SETS AND CERTAIN OTHER EQUIPMENT.**

6 “(a) IN GENERAL.—It is unlawful to sell, or offer for
7 sale, at retail after March 1, 2007, a television set with
8 a picture screen 13 inches or greater in size (measured
9 diagonally) unless that television set is equipped with a
10 tuner capable of receiving and decoding digital signals.

11 “(b) RETAIL DEFINED.—In this section, the term
12 ‘retail’ means the first sale for purposes other than re-
13 sale.”.

14 (2) COMMISSION NOT TO CHANGE SCHEDULE.—
15 The Federal Communications Commission may not
16 revise the digital television reception capability im-
17 plementation schedule under section 15.117(i) of its
18 regulations (47 C.F.R. 15.117(i)) except to conform
19 that section to the requirements of section 303A of
20 the Communications Act of 1934.

21 (3) CONVERTER BOXES.—The Commission
22 shall set the energy standards for converter boxes.
23 Notwithstanding any other provision of law, those
24 standards shall govern the energy standards for con-

1 verter boxes sold for use in the United States. This
2 paragraph shall not apply after May 17, 2009.

3 (d) DOWNCONVERSION FROM DIGITAL SIGNALS TO
4 ANALOG SIGNALS.

5 (1) DIGITAL-TO-ANALOG CONVERSION.—Section
6 614(b)(4) (47 U.S.C. 534(b)(4)) is amended—

7 (A) by redesignating subparagraph (B) as
8 subparagraph (I); and

9 (B) by inserting after subparagraph (A)
10 the following:

11 “(B) DIGITAL VIDEO SIGNAL.—With re-
12 spect to any television station that is transmit-
13 ting broadcast programming exclusively in the
14 digital television service in a local market, a
15 cable operator of a cable system in that market
16 shall carry any digital video signal requiring
17 carriage under this section and program-related
18 material in the digital format transmitted by
19 that station, without material degradation, if
20 the licensee for that station relies on this sec-
21 tion or section 615 to obtain carriage of the
22 digital video signal and program-related mate-
23 rial on that cable system in that market.

24 “(C) MULTIPLE FORMATS PERMITTED.—A
25 cable operator of a cable system may offer the

1 digital video signal and program-related mate-
2 rial of a local television station described in
3 subparagraph (A) in any analog or digital for-
4 mat or formats, whether or not doing so re-
5 quires conversion from the format transmitted
6 by the local television station, so long as—

7 “(i) the cable operator offers the dig-
8 ital video signal and program-related mate-
9 rial in the converted analog or digital for-
10 mat or formats without material degrada-
11 tion; and

12 “(ii) also offers the digital video signal
13 and program-related material in the man-
14 ner or manners required by this para-
15 graph.

16 “(D) TRANSITIONAL CONVERSIONS.—Not-
17 withstanding the requirement in subparagraph
18 (B) to carry the digital video signal and pro-
19 gram-related material in the digital format
20 transmitted by the local television station, but
21 subject to the prohibition on material degrada-
22 tion, until February 17, 2014—

23 “(i) a cable operator—

24 “(I) shall offer the digital video
25 signal and program-related material

1 in the format or formats necessary for
2 such stream and material to be
3 viewable on analog and digital tele-
4 visions; and

5 “(II) may convert the digital
6 video signal and program-related ma-
7 terial to standard-definition digital
8 format in lieu of offering it in the dig-
9 ital format transmitted by the local
10 television station;

11 “(ii) notwithstanding clause (i), a
12 cable operator of a cable system with an
13 activated capacity of 550 megahertz or
14 less—

15 “(I) shall offer the digital video
16 signal and program-related material
17 of the local television station described
18 in subparagraph (A), converted to an
19 analog format; and

20 “(II) may, but shall not be re-
21 quired to, offer the digital video signal
22 and program-related material in any
23 digital format or formats.

24 “(E) LOCATION AND METHOD OF CONVER-
25 SION.—A cable operator of a cable system may

1 perform any conversion permitted or required
2 by this paragraph at any location, from the
3 cable head-end to the customer premises, inclu-
4 sive.

5 “(F) CONVERSIONS NOT TREATED AS DEG-
6 RADATION.—Any conversion permitted or re-
7 quired by this paragraph shall not, by itself, be
8 treated as a material degradation.

9 “(G) CARRIAGE OF PROGRAM-RELATED
10 MATERIAL.—The obligation to carry program-
11 related material under this paragraph is effec-
12 tive only to the extent technically feasible.

13 “(H) DEFINITION OF STANDARD-DEFINI-
14 TION FORMAT.—For purposes of this para-
15 graph, a stream shall be in standard definition
16 digital format if such stream meets the criteria
17 for such format specified in the standard recog-
18 nized by the Commission in section 73.682 of
19 its rules (47 CFR 73.682) or a successor regu-
20 lation.”.

21 (2) TIERING.—

22 (A) AMENDMENT TO COMMUNICATIONS
23 ACT.—Clause (iii) of section 623(b)(7)(A) (47
24 U.S.C. 543(b)(7)(A)(iii)) is amended to read as
25 follows:

1 “(iii) Any analog signal and any dig-
2 ital video signal of any television broadcast
3 station that is provided by the cable oper-
4 ator to any subscriber, except a signal
5 which is secondarily transmitted by a sat-
6 ellite carrier beyond the local service area
7 of such station.”.

8 (B) EFFECTIVE DATE.—With respect to
9 any television broadcast station, this subsection
10 and the amendments made by this paragraph
11 shall take effect on the date the broadcaster
12 ceases transmissions in the analog television
13 service.

14 (3) MATERIAL DEGRADATION.—Section 614
15 (47 U.S.C. 534) is amended—

16 (A) by redesignating subsection (h) as sub-
17 section (i); and

18 (B) by inserting after subsection (g) the
19 following:

20 “(i) MATERIAL DEGRADATION.—For purposes of this
21 section and section 615, transmission of a digital signal
22 over a cable system in a compressed bitstream shall not
23 be considered material degradation as long as such com-
24 pression does not materially affect the picture quality the
25 consumer receives.”.

1 **SEC. 702. DIGITAL STREAM REQUIREMENT FOR THE BLIND.**

2 (a) RULES REINSTATED.—The video description
3 rules of the Federal Communications Commission con-
4 tained in the report and order identified as Implementa-
5 tion of Video Description of Video Programming, Report
6 and Order, 15 F.C.C.R. 15,230 (2000), shall, notwith-
7 standing the decision of the United States Court of Ap-
8 peals for the District of Columbia Circuit in *Motion Pic-
9 ture Association of America, Inc., et al., v. Federal Commu-
10 nications Commission, et al.* (309 F. 3d 796, November
11 8, 2002), be considered to be authorized and ratified by
12 law.

13 (b) CONTINUING AUTHORITY OF COMMISSION.—The
14 Federal Communications Commission—

15 (1) shall, within 45 days after the date of en-
16 actment of this Act, republish its video description
17 rules contained in the report and order *Implementa-
18 tion of Video Description of Video Programming, Re-
19 port and Order, 15 F.C.C.R. 15,230 (2000)*;

20 (2) may amend, repeal, or otherwise modify
21 such rules; and

22 (3) shall initiate a proceeding within 120 days
23 after the date of enactment of this Act, and com-
24 plete that proceeding within 1 year, to consider in-
25 corporating accessible information requirements in
26 its video description rules.

1 (c) ACCESSIBLE INFORMATION DEFINED.—In this
2 section, the term “accessible information” may include
3 written information displayed on television screens during
4 regular programming, hazardous warnings and other
5 emergency information, local and national news bulletins,
6 and any other information the Commission deems appro-
7 priate.

8 **SEC. 703. STATUS OF INTERNATIONAL COORDINATION.**

9 Until the date on which the international coordina-
10 tion with Canada and Mexico of the DTV table of allot-
11 ments is complete (as determined by the Federal Commu-
12 nications Commission), the Federal Communications
13 Commission shall submit a report every 6 months on the
14 status of that international coordination to the Senate
15 Committee on Commerce, Science, and Transportation
16 and the House of Representatives Committee on Energy
17 and Commerce.

18 **TITLE VIII—PROTECTING**
19 **CHILDREN**

20 **SEC. 801. VIDEO TRANSMISSION OF CHILD PORNOGRAPHY.**

21 Section 621 (47 U.S.C. 541) is amended by adding
22 at the end the following:

23 “(j) CHILD PORNOGRAPHY.—

24 “(1) IN GENERAL.—A video service provider au-
25 thorized to provide video service in a local franchise

1 area shall comply with the regulations on child por-
2 nography promulgated pursuant to paragraph (2).

3 “(2) REGULATIONS.—Not later than 180 days
4 after the date of enactment of the Communications,
5 Consumer’s Choice, and Broadband Deployment of
6 2006, the Commission shall promulgate regulations
7 to require a video service to prevent the distribution
8 of child pornography (as such term is defined in sec-
9 tion 254(h)(7)(F)) over its network.”.

10 **TITLE IX—INTERNET**
11 **NEUTRALITY**

12 **SEC. 901. NETWORK NEUTRALITY.**

13 (a) IN GENERAL.—Beginning 1 year after the date
14 of enactment of this Act, the Federal Communications
15 Commission shall report annually to the Senate Com-
16 mittee on Commerce, Science, and Transportation and the
17 House of Representatives Committee on Energy and Com-
18 merce for 5 years regarding—

19 (1) the developments in Internet traffic proc-
20 essing, routing, peering, transport, and interconnec-
21 tion;

22 (2) how such developments impact the free flow
23 of information over the public Internet and the con-
24 sumer experience using the public Internet

1 (3) business relationships between broadband
2 service providers and applications and online user
3 services; and

4 (4) the development of and services available
5 over public and private Internet offerings.

6 (b) DETERMINATIONS AND RECOMMENDATIONS.—If
7 the Commission determines that there are significant
8 problems with any of the matters described in subsection
9 (a) the Commission shall make such recommendations in
10 its next annual report under subsection (a) as it deems
11 necessary and appropriate to ensure that consumers can
12 access lawful content and run Internet applications and
13 services over the public Internet subject to the bandwidth
14 purchased and the needs of law enforcement agencies. The
15 Commission shall include recommendations for appro-
16 priate enforcement mechanisms but may not recommend
17 additional rulemaking authority for the Commission.

18 **TITLE X—MISCELLANEOUS**

19 **SEC. 1001. COMMISSIONER PARTICIPATION IN FORUMS**
20 **AND MEETINGS.**

21 (a) IN GENERAL.—Section 5 (47 U.S.C. 155) is
22 amended by adding at the end the following:

23 “(f) MEETINGS.—

24 “(1) ATTENDANCE REQUIRED.—Notwith-
25 standing 552b of title 5, United States Code, and

1 section 4(h) of this Act, the Commission may con-
2 duct a meeting that is not open to the public if the
3 meeting is attended by—

4 “(A) all members of the Commission; or

5 “(B) at least 1 member of the political
6 party whose members are in the minority.

7 “(2) VOTING PROHIBITED.—The Commission
8 may not vote or make any final decision on any mat-
9 ter pending before it in a meeting that is not open
10 to the public, unless—

11 “(A) otherwise authorized by section
12 552b(b) of title 5, United States Code; or

13 “(B) the Commission has moved its oper-
14 ations outside Washington, D.C., pursuant to a
15 Continuity of Operations Plan.

16 “(3) PUBLICATION OF SUMMARY.—If the Com-
17 mission conducts a meeting that is not open to the
18 public under this section, the Commission shall
19 promptly publish an executive summary describing
20 the matters discussed at that meeting after the
21 meeting ends, except for such matters as the Com-
22 mission determines may be withheld under section
23 552b(c) of title 5, United States Code. This para-
24 graph does not apply to a meeting described in para-
25 graph (4).

1 “(4) QUORUM UNNECESSARY FOR CERTAIN
2 MEETINGS.—Neither section 552b of title 5, United
3 States Code, nor paragraph (1) of this subsection
4 applies to—

5 “(A) a meeting of 3 or more members of
6 the Commission with the President, any person
7 employed by the Office of the President, any of-
8 ficial of a Federal, State, or local agency, a
9 Member of Congress or his staff;

10 “(B) the attendance, by 3 or more mem-
11 bers of the Commission, at a forum or con-
12 ference to discuss general communications
13 issues; or

14 “(C) a meeting of 3 or more members of
15 the Commission when the Continuity of Oper-
16 ations Plan is in effect and the Commission is
17 operating under the terms of that Plan.

18 “(5) SAVINGS CLAUSE.—Nothing in this sub-
19 section shall be construed to prohibit the Commis-
20 sion from doing anything authorized by section 552b
21 of title 5, United States Code.”.

22 **SEC. 1002. SEVERABILITY.**

23 If any provision of this Act, an amendment made by
24 this Act, or the application of such provision or amend-
25 ment to any person or circumstance is held to be unconsti-

1 tutional, the remainder of this Act, the amendments made
2 by this Act, and the application of such provisions to any
3 person or circumstance shall not be affected thereby.

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