

**[STAFF DISCUSSION DRAFT]**110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**H. R.** \_\_\_\_\_

To require the Federal Communications Commission to provide new consumer protection mechanisms for wireless service subscribers, to restrict State and local regulation of public providers of advanced communications capability and service, to increase spectrum efficiency by Federal agencies, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. MARKEY introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To require the Federal Communications Commission to provide new consumer protection mechanisms for wireless service subscribers, to restrict State and local regulation of public providers of advanced communications capability and service, to increase spectrum efficiency by Federal agencies, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wireless Consumer  
3 Protection and Community Broadband Empowerment Act  
4 of 2008”.

5 **SEC. 2. DEFINITIONS.**

6 (a) IN GENERAL.—In this Act:

7 (1) COMMISSION.—The term “Commission”  
8 means the Federal Communications Commission.

9 (2) COMMERCIAL MOBILE SERVICE.—The term  
10 “commercial mobile service” has the same meaning  
11 given such term in section 332(d) of the Commu-  
12 nications Act of 1934 (47 U.S.C. 332(d)).

13 (3) WIRELESS CUSTOMER EQUIPMENT.—The  
14 term “wireless customer equipment” means equip-  
15 ment employed on the premises of a person or car-  
16 ried on a person (other than a carrier) to originate,  
17 route, or terminate information services or tele-  
18 communications via a commercial mobile service,  
19 whether or not such equipment is made available by  
20 the provider of such service.

21 (4) WIRELESS MARKET AREA.—The term  
22 “wireless market area” shall be defined by the Com-  
23 mission by rule.

24 (5) WIRELESS SERVICE PLAN.—The term  
25 “wireless service plan” means any legally binding  
26 agreement between a commercial mobile service pro-

1 vider and a consumer related to the provision of  
2 commercial mobile service, including agreements re-  
3 lated to the provision of wireless customer equip-  
4 ment for use with such service.

5 (6) CHARGES.—The term “charges” includes  
6 fees and taxes.

7 (b) OTHER TERMS.—Any terms not defined within  
8 this Act that are defined in section 3 of the Communica-  
9 tions Act of 1934 (47 U.S.C. 153) have the meanings  
10 given in that section.

11 **TITLE I—NATIONAL POLICY FOR**  
12 **WIRELESS SERVICE CON-**  
13 **SUMER PROTECTION**

14 **SEC. 101. WIRELESS SERVICE PLAN DISCLOSURE.**

15 (a) DISCLOSURE TO CONSUMERS OF TERMS AND  
16 CHARGES.—The Commission shall require each commer-  
17 cial mobile service provider to describe the terms and  
18 charges associated with any wireless service plan offered  
19 by that provider in a clear, plain, conspicuous, and uni-  
20 form manner, including providing to consumers—

21 (1) a description of the terms associated with  
22 any wireless service plan, including—

23 (A) the duration of any such plan;

24 (B) the duration of any trial period in-  
25 cluded in such plan;

1 (C) the number of minutes of service per  
2 month or other duration included in any such  
3 plan and the method by which such minutes will  
4 be calculated and assessed;

5 (D) the terms for obtaining, and the  
6 amount of, any discount on acquiring or replac-  
7 ing any wireless customer equipment;

8 (E) whether such plan permits subscribers  
9 to obtain information services, including such  
10 services from third-party providers; and

11 (F) the existence of any early termination  
12 fees, any service initiation or activation fees, or  
13 any other non-recurring fees; and

14 (2) a description of any charges associated with  
15 any such plan and the amount of such charges, in-  
16 cluding—

17 (A) monthly charges, per-minute charges,  
18 roaming charges, and charges for additional  
19 minutes not included in such plan;

20 (B) charges for long distance and inter-  
21 national calling, charges for directory assist-  
22 ance, charges for receipt of incoming calls, and  
23 charges for additional services (such as text  
24 messaging services);

1 (C) charges for early termination, service  
2 initiation or activation, or other non-recurring  
3 events or services;

4 (D) any Federal, State, or local taxes and  
5 any regulatory fees; and

6 (E) any other charges for which consumers  
7 may be assessed under any such plan.

8 (b) DISCLOSURE REQUIRED PRIOR TO WIRELESS  
9 SERVICE PLAN FORMATION.—Beginning 30 days after  
10 the Commission has established the rules required by sub-  
11 section (a), each commercial mobile service provider has  
12 the duty to provide to a consumer the information re-  
13 quired under such subsection prior to such consumer en-  
14 tering into any new wireless service plan, modifying an  
15 existing plan, or renewing an existing plan for an addi-  
16 tional period.

17 (c) METHODS FOR DISCLOSURE.—In carrying out  
18 subsection (a), the Commission shall require the commer-  
19 cial mobile service provider to deliver to consumers seeking  
20 information concerning a wireless service plan a printed  
21 or electronic disclosure (whichever is selected by the con-  
22 sumer) of the information required by such subsection.

23 **SEC. 102. EARLY TERMINATION FEES.**

24 The Commission shall require that—

1           (1) each commercial mobile service provider  
2 offer a wireless service plan for which there is no  
3 early termination fee;

4           (2) if a commercial mobile service provider of-  
5 fers discounted wireless customer equipment in con-  
6 nection with any wireless service plan, such provider  
7 shall offer, to consumers who do not acquire or re-  
8 place such equipment from such provider at a dis-  
9 count, the opportunity to secure service (using the  
10 same or compatible wireless customer equipment),  
11 without a long-term wireless service plan, at a price  
12 no higher than a wireless service plan that—

13                   (A) is offered by such provider;

14                   (B) is comparable in the number of min-  
15 utes per month or other duration offered; and

16                   (C) is offered with discounted wireless cus-  
17 tomer equipment; and

18           (3) if a wireless service plan offered by a com-  
19 mercial mobile service provider has an early termi-  
20 nation fee—

21                   (A) the total amount of such early termi-  
22 nation fee shall be ratably reduced to zero, in  
23 equal increments, over the duration of a con-  
24 sumer's wireless service plan; and

1 (B) the amount of such early termination  
2 fee shall not exceed \$200.

3 **SEC. 103. WIRELESS SERVICE COVERAGE MAPS.**

4 (a) CONSUMER ACCESS TO SERVICE AREA MAPS.—  
5 The Commission shall require each commercial mobile  
6 service provider—

7 (1) to make available a map of the entire geo-  
8 graphic area for which such provider or such pro-  
9 vider's affiliate is licensed to provide commercial mo-  
10 bile service; and

11 (2) to provide to a consumer upon request the  
12 portion of the map described under paragraph (1)  
13 that—

14 (A) displays the wireless market area re-  
15 quested by such consumer; and

16 (B) depicts, in accordance with subsection  
17 (c)—

18 (i) the outdoor service coverage area  
19 of such provider; and

20 (ii) any known outdoor service cov-  
21 erage gaps.

22 (b) ONLINE ACCESS.—

23 (1) IN GENERAL.—Each commercial mobile  
24 service provider shall make available the map re-

1       quired under subsection (a)(2) on such provider's  
2       Internet website (or comparable successor facility).

3           (2) SEARCHABLE.—Each commercial mobile  
4       service provider shall ensure that the map made  
5       available pursuant to paragraph (1) shall be search-  
6       able by a consumer based on a street address and  
7       shall depict the general level of outdoor service  
8       strength available at such address, to the extent pre-  
9       diction of reception at such address is feasible using  
10      the formats specified in subsection (c)(1).

11          (3) IN-STORE ACCESS.—Each commercial mo-  
12      bile service provider shall ensure that the map gen-  
13      erated pursuant to paragraph (2) shall also be made  
14      available upon the request of a consumer either  
15      through electronic display or in a printed format at  
16      the point of sale of a wireless service plan.

17      (c) SPECIFICITY OF REQUIRED MAPS.—

18          (1) IN GENERAL.—Each commercial mobile  
19      service provider shall generate at least one map for  
20      each wireless market area for which service is pro-  
21      vided using predictive modeling and mapping tech-  
22      niques commonly used by radio frequency engineers  
23      in the commercial mobile service industry to depict  
24      approximate outdoor service coverage, based on sig-  
25      nal strength for the applicable commercial mobile



1 service technology and signal strength confidence  
2 levels under normal operating conditions on such  
3 provider's network, factoring in topographic condi-  
4 tions and subject to variables that impact radio serv-  
5 ice generally, which shall be disclosed as material  
6 limitations in commercial mobile service coverage de-  
7 piction and availability.

8 (2) UPDATING MAPS.—The map generated pur-  
9 suant to paragraph (1) shall be updated at reason-  
10 ably regular intervals.

11 (3) DETAILED USE.—The map generated pur-  
12 suant to paragraph (1) shall be in sufficient detail  
13 to identify—

14 (A) geographic areas generally where com-  
15 mercial mobile service is not predicted to be  
16 regularly available; and

17 (B) whether or not a consumer is predicted  
18 to receive commercial mobile service in the gen-  
19 eral geographic area in which such consumer's  
20 primary residence is located, to the extent pre-  
21 diction of reception in such area is feasible  
22 using the formats specified in paragraph (1).

23 (d) REGULATORY FLEXIBILITY.—In prescribing  
24 rules under this section, the Commission shall—

1           (1) prescribe the methods by which a vendor of  
2           a wireless service plan or wireless customer equip-  
3           ment who is not a provider of commercial mobile  
4           service (within the meaning of section 332(d)(2) of  
5           the Communications Act of 1934 (47 U.S.C.  
6           332(d)(2)) shall comply with the requirements of  
7           such rules; and

8           (2) consider—

9                   (A) the technical capability of rural com-  
10                   mercial mobile service providers with fewer than  
11                   5,000 subscribers to comply with this section,  
12                   and the economic feasibility of such compliance;  
13                   and

14                   (B) whether the requirements of the rules  
15                   under subsection (b) should apply to such pro-  
16                   viders.

17 **SEC. 104. BILLING POLICIES.**

18           The Commission shall—

19                   (1) prohibit a commercial mobile service pro-  
20                   vider from listing any charge on the billing state-  
21                   ment of a subscriber as a separately stated charge  
22                   other than a charge—

23                           (A) that was disclosed to a consumer as a  
24                           separate charge pursuant to section 101(a)(2);

1 (B) for telecommunications service or other  
2 service provided to a subscriber, including serv-  
3 ice provided by third-party providers;

4 (C) for nonpayment, early termination of  
5 service, or other lawful penalty; or

6 (D) for Federal, State, or local government  
7 sales taxes, excise taxes, or fees;

8 (2) require each commercial mobile service pro-  
9 vider to ensure that each bill sent to a subscriber for  
10 commercial mobile service is clearly organized, and  
11 describes in plain language the products and services  
12 for which a charge was imposed;

13 (3) require that all charges required by a Fed-  
14 eral, State, or local statute, rule, regulation, or  
15 order, if collected from a subscriber, be listed in a  
16 separate section of each bill sent to a subscriber and  
17 itemized separately in clear and plain language;

18 (4) require that, unless the subscriber otherwise  
19 requests, roaming or other off-network charges asso-  
20 ciated with any call for which a subscriber is  
21 charged a roaming or other off-network charge be  
22 itemized on each bill provided to such subscriber not  
23 later than 60 days after such call was placed and  
24 that such itemization clearly identify the date and  
25 location of such call; and

1           (5) require that each commercial mobile service  
2 provider, upon the request of a subscriber, provide  
3 an itemized bill to such subscriber at no cost to such  
4 subscriber.

5 **SEC. 105. SERVICE QUALITY MONITORING.**

6           (a) IN GENERAL.—The Commission shall require ex-  
7 aminations of the quality of commercial mobile service in  
8 the United States by requiring semiannual reports from  
9 commercial mobile service providers on the following:

10           (1) An assessment of the percentage of the li-  
11 censed geographic market for which the commercial  
12 mobile service provider currently offers service.

13           (2) In order to ensure the accuracy of the maps  
14 required under section 103, an assessment of the av-  
15 erage outdoor signal strength within wireless market  
16 areas.

17           (3) An assessment of dropped calls within wire-  
18 less market areas.

19           (4) Any known coverage gaps within wireless  
20 market areas.

21           (5) Any other matters the Commission con-  
22 siders appropriate.

23           (b) PUBLIC COMMENTS.—The Commission shall es-  
24 tablish an Internet website through which members of the  
25 public can review the reports provided by commercial mo-

1 bile service providers pursuant to subsection (a) and sub-  
2 mit to the Commission their comments on the quality of  
3 service of any commercial mobile service provider.

4 (c) PUBLICATION.—The Commission shall make  
5 available to commercial mobile service providers and to the  
6 public on a semiannual basis a report summarizing and  
7 analyzing the information received under this section on  
8 the quality of commercial mobile service.

9 **SEC. 106. WIRELESS SERVICE PLAN MODIFICATIONS AND**  
10 **TERMINATIONS.**

11 (a) MODIFICATIONS AND TERMINATIONS.—The  
12 Commission shall require commercial mobile service pro-  
13 viders to comply with each of the requirements in sub-  
14 section (b), subsection (c), and subsection (d).

15 (b) VALIDITY OF EXTENSIONS.—

16 (1) IN GENERAL.—Beginning 30 days after the  
17 Commission has promulgated rules under subsection  
18 (a), an extension of a wireless service plan shall not  
19 be valid unless—

20 (A) the commercial mobile service provider  
21 provides point-of-sale notice of such extension  
22 to the subscriber;

23 (B) the subscriber agrees to extend such  
24 plan by providing express consent to such ex-  
25 tension; and

1 (C) the subscriber is given the right to  
2 cancel such extension for any reason within 30  
3 days after the notice required by subparagraph  
4 (A) is provided.

5 (2) PENALTY-FREE TRIAL PERIOD.—If a sub-  
6 scriber cancels the extension of a wireless service  
7 plan within the 30-day period provided by paragraph  
8 (1)(C), the commercial mobile service provider may  
9 not impose a penalty or other charge for the can-  
10 cellation on the subscriber. For the purposes of this  
11 paragraph—

12 (A) a charge for commercial mobile service  
13 provided to the subscriber during the extension  
14 period before cancellation shall not be consid-  
15 ered to be a penalty or other charge for the  
16 cancellation; and

17 (B) an initiation or activation fee that is  
18 not refunded upon cancellation shall be treated  
19 as a penalty or other charge for cancellation.

20 (c) NOTICE OF PLAN CHANGES.—

21 (1) IN GENERAL.—Beginning 30 days after the  
22 Commission has promulgated rules under subsection  
23 (a), a commercial mobile service provider shall pro-  
24 vide directly to a subscriber written notice of any  
25 change in terms or charges of such subscriber's

1 wireless service plan at least 30 days before such  
2 change is to take effect.

3 (2) RIGHT TO TERMINATE.—If such change in  
4 terms or charges of such subscriber’s wireless service  
5 plan will result in higher rates or more restrictions  
6 on use of service or otherwise will result in a mate-  
7 rial, adverse change for a subscriber, such subscriber  
8 may, not later than 30 days after such change is to  
9 take effect, terminate the wireless service plan with-  
10 out penalty, including early termination fees, and re-  
11 ceive a pro rata refund of the charges, if any, paid  
12 for wireless customer equipment used in conjunction  
13 with such plan.

14 (3) CONSUMER NOTICE.—The notice of change  
15 required under paragraph (1) shall inform a sub-  
16 scriber of—

17 (A) the right of that subscriber to termi-  
18 nate the service and to receive a pro rata re-  
19 fund for any wireless customer equipment; and

20 (B) the steps necessary to exercise such a  
21 termination right.

22 (d) CONSUMER RIGHT TO CANCEL SERVICE WITHIN  
23 30 DAYS.—

24 (1) IN GENERAL.—Beginning 30 days after the  
25 Commission has promulgated rules under subsection

1 (a), a wireless service plan may be canceled upon the  
2 request of a subscriber for any reason during the  
3 30-day period that begins on the date on which such  
4 plan was executed.

5 (2) NO PENALTY.—If a subscriber exercises the  
6 right to cancel such plan under paragraph (1), there  
7 shall be no penalty or other costs, including early  
8 termination fees, to such subscriber for such termi-  
9 nation, except that such subscriber shall be respon-  
10 sible for paying the charges for the commercial mo-  
11 bile service used during the time period in which  
12 such plan was in effect and except as provided in  
13 paragraph (3).

14 (3) WIRELESS CUSTOMER EQUIPMENT  
15 CHARGES.—If a subscriber exercises the right to  
16 cancel such plan under paragraph (1), a subscriber  
17 shall receive a pro rata refund of the charges, if any,  
18 paid for wireless customer equipment used in con-  
19 junction with such plan if such equipment is re-  
20 turned during such 30-day period.

21 **SEC. 107. ENFORCEMENT.**

22 (a) ENFORCEMENT BY THE COMMISSION.—

23 (1) IN GENERAL.—Notwithstanding sections  
24 2(b) and 221(b) of the Communications Act of 1934  
25 (47 U.S.C. 152(b), 47 U.S.C. 221(b)), the Commis-



1 sion shall have the power and authority to enforce  
2 the provisions of this title (and the rules, regula-  
3 tions, and orders issued under this title) as if such  
4 provisions were provisions of the Communications  
5 Act of 1934 (or of rules, regulations, or orders  
6 issued under such Act).

7 (2) PENALTIES.—Penalties authorized by title  
8 V of the Communications Act of 1934 may be im-  
9 posed under this subsection for a violation of a pro-  
10 vision of this title or any rule, regulation, or order  
11 issued under this title.

12 (b) ENFORCEMENT BY THE STATES.—

13 (1) AUTHORITY.—The attorney general of a  
14 State, the State commission, or any other State  
15 agency authorized by State law may—

16 (A) bring a civil action on behalf of the  
17 residents of the State in a district court of the  
18 United States of appropriate jurisdiction to en-  
19 force the provisions of this title; and

20 (B) utilize administrative procedures au-  
21 thorized by the State—

22 (i) to enforce the provisions of this  
23 title and the rules, regulations, and orders  
24 issued under this title; and

1 (ii) to resolve billing disputes with re-  
2 spect to commercial mobile service.

3 (2) PENALTIES.—Penalties authorized by title  
4 V of the Communications Act of 1934 for a violation  
5 of a provision of that Act, or a rule, regulation, or  
6 order issued under that Act, may be imposed in a  
7 civil action under this subsection for a violation of  
8 a provision of this title, or a rule, regulation, or  
9 order issued under this title.

10 **SEC. 108. EFFECT ON STATE LAW.**

11 (a) PREEMPTION.—

12 (1) IN GENERAL.—Except as otherwise pro-  
13 vided in this section, this title preempts the laws of  
14 any State to the extent that such laws are incon-  
15 sistent with this title, or the rules, regulations, or  
16 orders issued by the Commission under this title.

17 (2) EXCEPTIONS.—This title shall not preempt  
18 any provision of State law or enforcement action  
19 that provides additional enforcement protection to  
20 consumers of commercial mobile service if such pro-  
21 vision of law or enforcement action—

22 (A) imposes higher fines or more punitive  
23 civil or criminal remedies, including injunctive  
24 relief, for any violation of this title, or the rules,

1 regulations, or orders issued by the Commission  
2 under this title; or

3 (B)(i) relates to terms, conditions, or  
4 issues that are not addressed by this title, or by  
5 the rules, regulations, or orders issued by the  
6 Commission under this title; and

7 (ii) is not determined by the Commission  
8 to be inconsistent with the public interest.

9 (b) PETITIONS CONCERNING PREEMPTION.—

10 (1) PETITIONS BY PROVIDERS.—

11 (A) AUTHORITY TO PETITION.—A com-  
12 mercial mobile service provider may submit a  
13 petition to the Commission to challenge a State  
14 law or consumer protection measure—

15 (i) as inconsistent with this title or  
16 the rules, regulations, or orders issued by  
17 the Commission under this title; or

18 (ii) as inconsistent with the public in-  
19 terest, if the measure relates to terms, con-  
20 ditions, or issues that are not addressed by  
21 this title, or the rules, regulations, or or-  
22 ders issued by the Commission under this  
23 title.

24 (B) DEADLINE FOR COMMISSION AC-  
25 TION.—The Commission shall act on any such

1           petition within 90 days and issue a final deter-  
2           mination on the issues presented in the petition.  
3           The Commission may issue an order staying the  
4           effectiveness of any State measure during, and  
5           no longer than, such 90-day period.

6           (2) PROCEEDINGS ON UNADDRESSED ISSUES.—

7           If, on the basis of any petition under paragraph (1),  
8           the Commission determines that a term, condition,  
9           or issue is not addressed by this title, or the rules,  
10          regulations, or orders issued by the Commission  
11          under this title, the Commission shall, within 180  
12          days after the date of such determination, conduct  
13          an inquiry or other proceeding to determine whether  
14          the Commission should, in the public interest, pro-  
15          mulgate a rule, regulation, or order to address such  
16          term, condition, or issue.

17          (c) SAVINGS PROVISIONS.—

18           (1) LAWS OF GENERAL APPLICABILITY.—Noth-  
19           ing in this title shall be construed to preempt or oth-  
20           erwise affect laws of general applicability in a State,  
21           including consumer protection laws of general appli-  
22           cability.

23           (2) MORE STRINGENT ENFORCEMENT OF CON-  
24           SISTENT STATE LAWS.—Nothing in this title pro-  
25           hibits a State from imposing higher fines or more

1       punitive civil or criminal remedies, including injunc-  
2       tive relief, for any violation of State laws that are  
3       consistent with this title and the rules, regulations,  
4       and orders issued by the Commission under this  
5       title.

6       **SEC. 109. DEADLINE FOR PROMULGATION OF RULES.**

7       The Commission shall complete all actions necessary  
8       to establish rules to implement the requirements of this  
9       title not later than 180 days after the date of enactment  
10      of this Act and thereafter may amend such rules from  
11      time to time.

12                   **TITLE II—COMMUNITY**  
13      **BROADBAND EMPOWERMENT**

14      **SEC. 201. LOCAL GOVERNMENT PROVISION OF ADVANCED**  
15                   **COMMUNICATIONS CAPABILITY AND SERV-**  
16                   **ICES.**

17      No State or local government statute, regulation, or  
18      other legal requirement may prohibit, or have the effect  
19      of prohibiting, any public provider from providing ad-  
20      vanced communications capability or service to any person  
21      or to any public or private entity.

22      **SEC. 202. SAFEGUARDS.**

23      (a) **COMPETITION NEUTRALITY.**—A public pro-  
24      vider—

1           (1) shall not grant any regulatory preference to  
2           itself or to any provider of advanced communications  
3           capability or service that it owns or with which it is  
4           affiliated; and

5           (2) shall apply its ordinances, rules, and poli-  
6           cies, including those relating to the use of public  
7           rights-of-way, permitting, performance bonding, pro-  
8           curement, and reporting, without discrimination in  
9           favor of any such provider as compared to other pro-  
10          viders of such capability or service.

11          (b) APPLICATION OF GENERAL LAWS.—Except as  
12          provided in section 201 and subsection (a) of this section,  
13          nothing in this title affects any obligation or benefit that  
14          a public provider has under any other Federal or State  
15          law or regulation.

16          **SEC. 203. COMMUNITY INPUT.**

17          (a) NOTICE AND COMMUNITY INPUT.—Before a pub-  
18          lic provider may provide advanced communications capa-  
19          bility or service to the public, either directly or through  
20          a public-private partnership, such public provider shall—

21                  (1) publish a notice of its intention to do so  
22                  that—

23                          (A) generally describes the advanced com-  
24                  munications capability or service to be provided

1           and the proposed coverage area for such capa-  
2           bility or service; and

3           (B) identifies any special advanced commu-  
4           nications capability or service to be provided in  
5           low-income areas or other demographically or  
6           geographically defined areas; and

7           (2) provide local citizens and private-sector en-  
8           tities with an opportunity to be heard on the costs  
9           and benefits of the project and potential alternatives  
10          to it.

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

14           (1) any contract or other arrangement under  
15           which a public provider is providing advanced com-  
16           munications capability or service to the public as of  
17           the date of enactment of this Act; and

18           (2) any proposal by a public provider to provide  
19           advanced communications capability or service to the  
20           public that, as of such date of enactment—

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

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

23                   (C) has been approved by referendum.

1 **SEC. 204. EXEMPTIONS.**

2 The requirements of sections 202 and 203 do not  
3 apply—

4 (1) to a public provider's provision of advanced  
5 communications capability or service to itself or to  
6 another public entity; or

7 (2) during an emergency declared by—

8 (A) the President;

9 (B) the Governor of the State in which the  
10 public provider is located; or

11 (C) any other elected local official author-  
12 ized by law to declare a state of emergency in  
13 the jurisdiction in which the public provider is  
14 located.

15 **SEC. 205. DEFINITIONS.**

16 In this title, the following definitions apply:

17 (1) **ADVANCED COMMUNICATIONS CAPABILITY**  
18 **OR SERVICE.**—The term “advanced communications  
19 capability or service” means a capability or service  
20 that enables a user to originate or receive high-qual-  
21 ity voice, data, graphics, video, or other communica-  
22 tions using any broadband technology.

23 (2) **PUBLIC PROVIDER.**—The term “public pro-  
24 vider” means a State or political subdivision thereof,  
25 any agency, authority, or instrumentality of a State  
26 or political subdivision thereof, or any entity that is



1 owned, controlled, or otherwise affiliated with a  
2 State, political subdivision thereof, or its agency, au-  
3 thority, or instrumentality.

4 **TITLE III—SPECTRUM EFFI-**  
5 **CIENCY AND AVAILABILITY**  
6 **ASSESSMENT**

7 **SEC. 301. EFFICIENCY IMPLEMENTATION PLAN AND SPEC-**  
8 **TRUM AVAILABILITY ASSESSMENT.**

9 Section 104 of the National Telecommunications and  
10 Information Administration Organization Act (47 U.S.C.  
11 903) is amended by adding at the end the following new  
12 subsections:

13 “(f) SPECTRUM EFFICIENCY PLAN.—Within 180  
14 days after the date of enactment of the Wireless Consumer  
15 Protection and Community Broadband Empowerment Act  
16 of 2008, the Secretary shall adopt and commence imple-  
17 mentation of a plan for Federal agencies with existing mo-  
18 bile radio systems to use spectrum technologies that are  
19 more spectrum-efficient and cost-effective. Such plan shall  
20 include a time-table for implementation.

21 “(g) REPORT.—Within 270 days after the date of en-  
22 actment of the Wireless Consumer Protection and Com-  
23 munity Broadband Empowerment Act of 2008, the Sec-  
24 retary shall submit to the Committee on Energy and Com-  
25 merce of the House of Representatives and the Committee

1 on Commerce, Science, and Transportation of the Senate  
2 a report containing the following—

3 “(1) a summary of the plan adopted under sub-  
4 section (f);

5 “(2) an inventory of used and unused fre-  
6 quencies, including both governmental and non-  
7 governmental uses;

8 “(3) a list of frequencies that, due to the great-  
9 er efficiency obtained under the plan adopted under  
10 subsection (f) or through other initiatives, can be  
11 made available for re-allocation to the Commission;

12 “(4) a list of frequencies that, due to the great-  
13 er efficiency obtained under the plan adopted under  
14 subsection (f) or through other initiatives, can be  
15 made available for use by the public on a shared or  
16 secondary basis for commercial or non-commercial  
17 use;

18 “(5) a time-table for implementing any re-allo-  
19 cation possible under paragraph (2) or sharing  
20 under paragraph (3); and

21 “(6) a detailed itemization of frequencies for  
22 which re-allocation or sharing is not possible and the  
23 reasons why such action can not occur.

24 “(h) DEFINITION OF SHARED OR SECONDARY  
25 BASIS.—For purposes of this section, the term “shared

1 or secondary basis” means that Government agencies are  
2 the primary licensees of particular spectrum, but that non-  
3 governmental users may use such frequencies on a shared,  
4 or co-equal basis, from the standpoint of frequency inter-  
5 ference mitigation, or on a secondary basis where non-gov-  
6 ernmental users must limit interference to governmental  
7 use.”.