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Calendar No. 652

109TH CONGRESS *2d Session*	SENATE	REPORT 109–355

COMMUNICATIONS OPPORTUNITY, PROMOTION, AND ENHANCEMENT ACT OF 2006

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

H.R. 5252

together with

ADDITIONAL VIEWS

SEPTEMBER 29, 2006.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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109TH CONGRESS, 2d Session | SENATE | REPORT 109–355

COMMUNICATIONS OPPORTUNITY, PROMOTION, AND ENHANCEMENT ACT OF 2006

SEPTEMBER 29, 2006.—Ordered to be printed

Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 5252]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 5252) to promote the deployment of broadband networks and services, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The objective of this legislation is to update the Nation's communications laws in a manner that benefits consumers and encourages deployment of broadband infrastructure and services throughout the country and eliminate unnecessary regulations where appropriate.

BACKGROUND AND NEEDS

Ten years have passed since Congress conducted a comprehensive review of the Nation's communications laws. During that time period, technology has advanced significantly and there is an increasing need to ensure that our communications laws promote competitive choice and innovative communications services for consumers. To address this need, the Committee has reviewed and included multiple ways to increase the deployment of broadband. Ad-

ditionally, the Committee included provisions in this bill to increase competition in the video services market, which, in turn, will provide additional incentives for the deployment of broadband infrastructure.

SUMMARY OF PROVISIONS

The provisions contained in H.R. 5252 focus on a wide variety of communications issues. Principal among these issues are titles in the bill designed to make needed reforms to the universal service system and to increase competition in the video services market, both of which will further Congress' goal of advancing the deployment of broadband networks. Specifically, the bill is divided into 14 separate titles which organized as follows:

- Title I addresses several communications issues designed to assist military personnel and strengthen homeland security. Specifically, this title includes provisions designed to reduce the cost of phone service for military personnel located overseas and to improve the interoperable communications capabilities of our nation's federal, state and local first responders through planning, training, and equipment grants.
- Title II contains a variety of reforms to the current universal service system, including provisions that would expand the current contribution mechanism to provide jurisdiction over all communications service providers. It also would establish a new fund within universal service of up to $500 million annually to support the deployment of broadband to unserved areas in the United States. Additionally, the title contains other changes to existing law that extend certain interconnection rights, duties, and obligations to facilities-based, IP-enabled voice service providers and including certain obligations under the Communications Act with respect to access for persons with disabilities to IP-enabled voice providers and manufacturers of IP-enabled voice equipment.
- Title III reforms the process for obtaining a video franchise under current law and makes other changes related to the provision of video services to consumers. Specifically, the bill amends Title VI of the Communications Act to require franchising authorities to issue franchises pursuant to a standard franchise application form that would be drafted by the Federal Communications Commission (FCC) and to require franchise authorities to consider standard franchise applications within 90 days. Under the standard franchise agreement, franchise authorities would be permitted to require payment of up to 5 percent of gross revenues as a franchise fee, require payment for the support of public, educational, and governmental access facilities and institutional networks subject to limits established in this title, and provide certain channel capacity for public educational, and governmental use. In addition to provisions affecting the process of obtaining a video franchise, Title III also makes a number of changes to current law designed to create greater uniformity in the regulation of video service providers to eliminate unnecessary obligations. To address concerns about cherry picking competitive build-out, the bill enhances current red-lining requirements. Finally, the new framework for video franchising would apply not only to new

entrants, but would also be available to incumbent cable operators either upon the expiration of their current franchise term or upon the arrival of a new competitive video service provider, whichever is earlier.

• Title IV addresses issues related to the transmission of digital content. Specifically, the title attempts to ensure that satellite carriers providing national television and Internet service to all or substantially all of the lower 48 States also provide comparable services in Alaska and Hawaii to the extent technically feasible. In addition, the title provides the FCC with express authority to implement regulations necessary to protect digital broadcast television content pursuant to the FCC's previous "Broadcast Flag" order. With respect to digital audio content, the title would similarly provide the FCC with express authority to issue regulations governing the protections of digital audio content, but may only exercise that authority if, after 1 year (and one 6 month extension if granted by the FCC) the newly-created Digital Audio Review Board is unable to agree upon a consensus standard that is consistent with fair use principles.

• Title V affirmatively preempts state laws prohibiting public provisioning of broadband services consistent with this title while requiring that laws affecting the provision of such services be applied in a neutral manner among public and private providers.

• Title VI contains provisions designed to spur the development of new, inexpensive broadband services by allowing unlicensed wireless devices to use certain vacant broadcast frequencies so long as such use protects licensees from harmful interference.

• Title VII addresses issues related to the digital television transition, including changes that would improve consumer education, codify the FCC's digital tuner requirement, and permit the temporary down conversion of digital broadcast signals by cable and satellite operators.

• Title VIII addresses issues concerning the impact of certain programming on children and specifically strengthens existing laws related to child pornography for video service providers and operators of commercial websites.

• Title IX establishes a number of rights for subscribers of Internet services in order to prevent an Internet Service Provider from undermining a consumer's experience on the Internet and from limiting the subscriber's ability to go wherever he or she wants on the Internet at whatever speed he or she purchased. In addition, this title would also provide consumers with the right to purchase stand-alone broadband service without having to purchase other services like video or phone service.

• Title X contains a number of miscellaneous provisions amending current laws, including provisions affecting the administration and enforcement powers of the FCC, establishing a program for basic research in advanced information and communications technologies, preempting state regulation of the terms and conditions of wireless services, codifying the FCC's *vonage* and *pulver.com* orders, and permanently extending the

Internet tax moratorium, which under current law expires on November 1, 2007.

• Title XI contains provisions that would eliminate current restrictions limiting the licensing of low power FM stations in order to promote localism in broadcast radio.

• Title XII imposes a 3 year moratorium on the imposition of any new taxes by state or local governments that specifically target providers of mobile services.

• Title XIII contains provisions designed to protect consumers from the manipulation of Caller ID information or "spoofing".

• Title XIV focuses on a number of wireless licensing issues designed to improve deployment and build-out in rural and underserved areas, including provisions related to the use of small license areas in future auctions.

LEGISLATIVE HISTORY

Following a series of informal listening sessions that allowed Members to learn about new technologies, the Committee began its review of the Nation's communications laws with a series of over 20 hearings, reviewing various policy issues addressed in this legislation.

Upon completion of these hearings, S. 2686, the "Communications, Consumers' Choice, and Broadband Deployment Act of 2006," was introduced on May 1, 2006 by Chairman Stevens (for himself and Co-chairman Inouye). Subsequently, the Committee conducted three legislative hearings on May 18 and 25, and on June 13. After receiving comments from Committee Members and interested parties, the majority released a second draft of the bill on June 9 and a third draft on June 16. This third draft amended H.R. 5252 by striking everything after the enacting clause and inserting the revised language.

On June 22, 2006, the Committee began its Executive Session during which it considered H.R. 5252. The Executive Session continued on June 27 and 28. Each day, the Committee adopted without objection a separate manager's package that included a number of amendments. Additionally, the Committee considered several individual amendments. On the final day, the Committee, by a roll call vote of 15-7, ordered that H.R. 5252 be reported with amendments.

AMENDMENTS TO TITLE I OF THE BILL

Several amendments were adopted with regard to title I of the bill. The first manager's package contained an amendment by Senator Inouye that would modify section 151(b) of the bill to require explicitly that the Commission consider the public interest when streamlining its process for certifying devices allowing seamless mobility. It also contained an amendment by Senators McCain and Boxer that would modify section 152(b) of the bill to require that $1 billion in interoperable grant funds be administered by the Secretary of Homeland Security instead of the Secretary of Commerce. The McCain/Boxer amendment was adopted as modified in Executive Session by Senator Inouye's amendment requiring that grant funds not be used for any purpose other than those provided in sec-

tion 3006 of the Deficit Reduction Act. The Committee adopted an amendment offered by Senators Vitter and Stevens that would expedite the awarding of public safety interoperable communications grants, and a second degree amendment by Senator Stevens that would make the deadline 1 year sooner than in the amendment. The Committee also adopted an amendment offered by Senators Bill Nelson and Burns to require the role of public safety answering points and automatic-location or "E–911" services to be considered in the awarding of interoperable emergency communications grants, and to set aside such grant funds for Public Safety Answering Point (PSAP) and E–911 projects.

AMENDMENTS TO TITLE II OF THE BILL

Several amendments were adopted with regard to title II of the bill. The Committee adopted by a rollcall vote of 14 to 8 an amendment by Senator Sununu, along with a series of second degree amendments to title II of the bill, that would codify the Commission's rulings in FCC 04–267 and FCC 04–27 and clarify that no consumer protection laws are preempted by this provision. The Sununu amendment would also clarify that intercarrier compensation charges should be applied in a reciprocal fashion to IP-enabled voice services.

The first manager's package adopted by the Committee included several amendments regarding title II of the bill. An amendment by Senator Stevens would clarify that the State preemption provisions do not affect State or local tax laws. An amendment by Senator Burns, as modified by a second degree amendment by Senator Stevens, would modify the rural exemption in section 251(f)(1) of the Communications Act. An amendment by Senator Rockefeller would clarify that IP-enabled voice service providers are subject to payphone compensation rules. An amendment by Senators Snowe and Rockefeller would establish new performance goals for the E-Rate program. An amendment by Senators Bill Nelson and Allen would clarify the eligible classes of end users for the low-volume exception authority provided to the Commission. An amendment by Senators Bill Nelson and McCain would ensure that customer premises equipment is covered by the disability provisions in title II of the Communications Act and to require that the Commission submit a report to Congress on compliance. An amendment by Senator Cantwell would permit the Commission to exempt non-profit organizations offering free communications service from universal service contributions. An amendment by Senator DeMint would require that any E-Rate vendor that is criminally convicted of fraud in connection with the E-Rate program be permanently barred from participation in the program. An amendment by Senator Ben Nelson would provide access to Universal Service funds for certain health care providers in rural areas.

The third manager's package adopted by the Committee included an amendment by Senator Allen that would clarify that, for the purposes of determining the rights and obligations of IP-enabled voice service providers, certain facilities meet the definition of "facilities-based". An amendment by Senator Inouye, as modified, would improve Universal Service support of high-cost services in insular areas.

The Committee also adopted an amendment by Senator Ben Nelson, as modified by Senator Sununu, that would direct the Commission to determine a fair allocation for communications services offered in bundled packages between those portions that can be assessed state universal service charges and those that cannot. The Committee adopted an amendment by Senator Dorgan that would require the Commission to submit its proposed universal service contribution rules to Congress for a 90-day review prior to implementing the rules.

AMENDMENTS TO TITLE III OF THE BILL

Several amendments were adopted with regard to title III of the bill. The second manager's package adopted by the Committee included several amendments regarding title III of the bill. An amendment by Senator Stevens would address four provisions important to local franchising authorities-increasing the franchising period from 75 to 90 days, allowing franchising authorities to charge a fee on other fees paid to the local authorities, defining video services in a manner that includes an Internet protocol television service offered by a large incumbent telephone company, and preserving certain support received by local franchises with respect to PEG and Institutional Networks. Senator Allen's amendment would make a technical clarification that entities providing video services with open video systems pursuant to section 653 of the Act are subject to title III. Senator Boxer's amendment would remove a requirement that false statements made to a local franchising authority also be "willful and repeated" before the offending video service provider could be subject to franchise revocation. Senator Lautenberg's amendment would preserve section 601 of the Communications Act which sets forth the purpose of title VI of that Act. Senator Pryor's amendment would limit the amount that video service providers may charge subscribers for terminating their service early. An amendment by Senator Rockefeller would require the FCC to complete its Notice of Inquiry concerning the impact of violent television programming on children.

The third manager's package adopted by the Committee included several amendments regarding title III of the bill. An amendment by Senator Inouye would restate the prohibition on regulation of direct broadcast satellite services by local franchising authorities. Senator Inouye's amendment, as modified in Executive Session, would provide space on the standardized franchise application for limited, additional information. An amendment by Senator Inouye, as modified, would preserve certain provisions regarding use of public rights-of-way that exist in current law. Another amendment by Senator Inouye, as modified to apply only to Hawaii, would modify a provision regarding PEG and Institutional Network support. An amendment by Senators Pryor and Bill Nelson, as modified, would provide for auxiliary enforcement of consumer protection and customer service regulation.

AMENDMENTS TO TITLE V OF THE BILL

The first manager's package adopted by the Committee included a bipartisan amendment by Senators Lautenberg, McCain and Ensign that would make technical corrections to provisions in title V of the bill regarding community broadband networks.

AMENDMENTS TO TITLE VII OF THE BILL

Several amendments were adopted with regard to title VII of the bill. The first manager's package adopted by the Committee included several amendments regarding title VII of the bill. An amendment by Senator McCain would clarify that the restriction on importing analog-only televisions into the United States, or shipment of such sets in interstate commerce, after March 1, 2007, would apply specifically to manufacturers or importers. An amendment by Senator Rockefeller would amend section 701 of the bill to require that the Television Ratings Oversight Monitoring Board and the American Association of People with Disabilities be included in the public interest groups chosen by the FCC to be members of the DTV Working Group required by that section. An amendment by Senator DeMint would amend the satellite downconversion provisions in section 701 of the bill to clarify that carriage obligations apply only to a television broadcast station's primary video signal. An amendment by Senators Bill Nelson and McCain to section 701 of the bill that would require the DTV Working Group to recommend to the FCC procedures for contacting persons with disabilities in order to inform them about the DTV transition.

The third manager's package included an amendment offered by Senator Rockefeller to section 701 of the bill that would require all television sets with a screen larger than 13 inches, measured diagonally, to be equipped with a feature designed to enable viewers to block all programs with a common rating. The Committee also adopted an amendment by Senator Bill Nelson to increase consumer awareness regarding the digital television transition.

AMENDMENTS TO TITLE VIII OF THE BILL

The second manager's package adopted by the Committee included amendments regarding title VIII of the bill. An amendment by Senator Rockefeller would prohibit interactivity with commercial matter during children's programming.

The third manager's package adopted by the Committee included amendments by Senators Burns and Kerry, as modified and combined, that would enhance the prosecution of child pornographers. The package also included an amendment by Senator Dorgan which would require the FCC to study commercial proposals to broadcast radio or television material to students on school busses.

AMENDMENTS TO TITLE IX OF THE BILL

The third manager's package adopted by the Committee included an amendment by Senator Stevens regarding title IX of the bill. The Stevens amendment would increase the monetary fines for Internet neutrality violations from $11,000 to $500,000 each.

AMENDMENTS TO TITLE X OF THE BILL

Several amendments were adopted with regard to title X of the bill. The Committee adopted by a rollcall vote of 19 to 3 an amendment by Senator Allen that would add a section 1013 to the bill that would amend section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) to make that Act permanent. The Allen amendment would permanently extend that Act's provisions bar-

ring State governments from taxing Internet access services, which provisions are currently scheduled to expire on November 1, 2007.

The second manager's package included several amendments with regard to title X of the bill, which contains miscellaneous provisions. An amendment by Senator Stevens would strike from title X of the bill a provision that required that challenges of FCC rulings or regulations be brought in the United States District Court for the District of Columbia. An amendment by Senator Nelson would improve public safety by requiring a status report on the establishment of an E–911 implementation and coordination office under the Enhanced 911 Act. An amendment by Senator Bill Nelson would require the Commission to study telemedicine services and report to Congress on the availability of broadband facilities capable of providing such services. Another amendment by Senator Bill Nelson would amend the Children's Television Act of 1990 to apply the time limitations on advertising to video service providers. An amendment by Senators Nelson and Pryor would ensure that provisions of title V of the Communications Act, regarding forfeitures for obscenity and other violations of the Act, would apply to companies that provide video services. Another amendment by Senators Nelson and Pryor would ensure that certain provisions of title VII of the Communications Act will apply to companies that provide video services. An amendment by Senator Ben Nelson would hold independent network affiliates harmless from section 503(b) penalties for network programs they have not had the opportunity to preview or with respect to which they have no notice from the network as to objectionable content. An amendment by Senator Inouye would require the Commission to revisit the current speed it deems to qualify as broadband, namely 200 kilobits per second, and to periodically update such classification. The Committee adopted an amendment by Senators Inouye, Cantwell and Dorgan that would add a section 1002 to the bill that would establish an Office of Indian Affairs within the FCC.

The third manager's package also included several amendments with regard to title X of the bill. An amendment by Senator Inouye would modify the regulatory forbearance provisions in section 10 of the Communications Act. An amendment by Senators Bill Nelson and Snowe would add a section 1003 to the bill to establish within the Commission an Office of Consumer Advocate. An amendment by Senators Stevens and Pryor would add to section 1006 of the bill a provision that would require the FCC to adopt customer service and consumer protection rules for wireless mobile service providers. An amendment by Senator Sununu would add to title X of the bill a provision that would codify the FCC's decisions in its *vonage* and *pulver.com* proceedings and would dismiss any pending challenges to those decisions. This amendment would not supersede or preempt the consumer protection laws of any State, including any privacy or anti-child pornography law of a State, except to the extent that such laws regulate the rates for entry or exit by a provider of IP-enabled voice services. The Committee adopted an amendment by Senators Dorgan, Lott and Cantwell that would add a provision to title X of the bill that would require that before the FCC changes section 73.3555 of its rules, as those regulations were in effect on June 1, 2003, the FCC must issue a further Notice of Proposed Rulemaking with respect to any such changes. This section

added by the Dorgan/Lott/Cantwell amendment would declare null and void the cross-media limits rule adopted by the FCC on June 2, 2003, pursuant to its proceeding on broadcast media ownership rules (FCC 03–127) and would reinstate with effect from June 2, 2003, the FCC's rule 73.3555, as those rules were in effect. The Committee adopted an amendment by Senator Dorgan that would add a provision to title X that would prohibit the FCC from promulgating rules regarding media ownership without first completing the regulatory action in its section 257 proceeding initiated on June 15, 2004, concerning diversity in media ownership.

Also with regard to title X, the Committee adopted an amendment by Senators Bill Nelson, DeMint and Cantwell that would require within 180 days of enactment that the FCC amend its rules requiring collection of data twice a year through its Form 477, which provides a snapshot of broadband deployment and local phone competition throughout the United States. The new provision would require that broadband service providers report information, by zip code area where broadband service is provided, including the percentage of households offered service and the percentage of such households subscribing, as well as the average price per megabyte of download and upload speed, the broadband service's actual average throughput, and contention ratio of the number of users sharing the same line. The FCC would, however, be required to exempt a broadband service provider from such reporting requirements if a provider's compliance is cost prohibitive, as defined and determined by the FCC. This section would further require that, with respect to areas unserved by any broadband service provider, the FCC use Census Bureau data to provide an annual report to Congress with information on such area's population, population density and average per capita income. The Committee adopted an amendment by Senator Bill Nelson that would prohibit FCC bureau chiefs and persons in similar positions at the FCC from lobbying the FCC until one year after leaving the FCC.

The third manager's package adopted by the Committee included a second degree amendment by Senator Sununu that would require the FCC to complete within 270 days of enactment of the bill the proceeding on special access rates in FCC Dockets No. 05–25 and 01–321.

AMENDMENTS ADOPTED AS NEW TITLES TO THE BILL

The Committee adopted by a rollcall vote of 14 to 7 an amendment by Senator McCain that would add a new title XI to the bill. The McCain amendment would repeal language enacted in the 2000 Commerce, Justice, and State appropriations bill that required the FCC to delay the licensing of low power FM (LPFM) stations on third adjacent channels to full power FM stations. The amendment would direct the FCC to modify its rules to eliminate third adjacent minimum distance separation requirements between LPFM stations and full power FM stations, FM translator stations, and FM booster stations. The amendment would also require interference protection for radio stations that provide reading services over the radio frequencies to assist the blind. Such radio reading service (RRS) stations broadcast using a sub-carrier frequency, which is more susceptible to LPFM interference due to its spacing on an FM channel. The FCC currently has a temporary rule pre-

venting LPFM stations from operating on a third adjacent channel to a RRS. This section would direct the FCC to make this rule permanent. The amendment would require the FCC when licensing FM translator stations to ensure that licenses are available to both FM translator stations and low-power FM stations, according to the needs of the local community.

The Committee adopted by a rollcall vote of 21 to 1 an amendment by Senators McCain, Allen, Bill Nelson and Stevens that would add a new title XII to the bill. This amendment would for three years after enactment prohibit States and localities from levying new taxes that single out wireless phone service, but would not affect existing taxes.

The Committee adopted an amendment by Senator Bill Nelson that would add a new title XIII to the bill. The Bill Nelson amendment would make it unlawful to cause any caller identification service to transmit misleading or inaccurate caller identification information and would require the FCC to adopt rules within 6 months of enactment to implement such prohibition.

The Committee adopted an amendment by Senators Burns and Snowe that would add a new title XIV to the bill. The Burns/Snowe amendment would require the FCC to reconfigure the 700 MHz band plan, provided such action does not delay the DTV transition or auction of recovered analog broadcast spectrum, in order to encourage rural deployment, and to direct the FCC to review spectrum use.

The Committee, by a rollcall vote of 15–7, ordered that H.R. 5252 be reported with amendments.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, Setpember 15, 2006.

Hon. TED STEVENS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5252, the Communications Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susan Willie (for federal costs), Sarah Puro (for the impact on state and local governments), and Philip Webre (for the impact on the private sector).

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 5252—Communications Act of 2006

Summary: H.R. 5252 would make numerous changes to provisions of current law that regulate telecommunications. The act

would direct how local governments may issue franchises to providers of video service. The act also would create a new program in the Universal Service Fund (USF) to support the development of broadband service to unserved areas and make other changes to existing USF programs. H.R. 5252 also would authorize the appropriation of $250 million over the 2007–2011 period for research grants on advanced communication services.

CBO estimates that enacting H.R. 5252 would increase direct spending by $5.2 billion over the 2007–2016 time period. Over the same period, CBO estimates that revenues would increase by $5.0 billion. In addition, assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 5252 would result in discretionary outlays of $175 million over the 2007–2011 period.

H.R. 5252 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). In particular, the act would limit certain intergovernmental entities from imposing certain fees on providers of cable services, permanently extend a prohibition on certain state and local taxation of Internet access services, and impose a three-year moratorium on certain new state and local taxes that apply to mobile telephone service. The act also would eliminate the rights of certain state and local governments to appeal and bring court cases relating to the Internet-based telephone service known as Voice-over-Internet-Protocol (VOIP). Other provisions of the act would preempt state and local laws and require certain intergovernmental entities to notify and file reports with the Federal Communications Commission (FCC).

CBO estimates that the net direct costs of these mandates to state and local governments would exceed the threshold established in UMRA ($64 million in 2006, adjusted annually for inflation) in at least one of the first five years after enactment. Those costs, in the form of forgone revenues, would peak during the 2008–2009 period, and total at least $150 million—and perhaps as high as $400 million—in those two years. Costs would decrease after 2009 but would likely remain above $100 million through 2011.

H.R. 5252 also would impose numerous private-sector mandates as defined in UMRA on providers of telecommunications services, Internet Protocol-enabled (IP-enabled) voice services, Internet service providers, manufacturers and distributors of television receivers, broadcasters, video and satellite service providers, and others. At the same time, the act would provide some forms of regulatory and tax relief for portions of those industries. Based on information from government and industry sources, CBO estimates that the aggregate costs of complying with the mandates in H.R. 5252 would exceed the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5252 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit), 250 (science, space, and technology), and 950 (undistributed offsetting receipts).

Basis of estimate: For this estimate, CBO assumes that the act will be enacted early in fiscal year 2007 and that the necessary amounts will be appropriated near the start of each fiscal year.

Outlay estimates are based on historical spending patterns for existing or similar programs. CBO estimates that enacting H.R. 5252 would increase direct spending by $5.2 billion over the 2007–2016 period and increase revenues by $5.0 billion over the same period. In addition, assuming appropriation of the amounts authorized, CBO estimates that implementing H.R. 5252 would result in discretionary outlays of $175 million over the 2007–2011 period.

	By fiscal year, in millions of dollars—									
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
CHANGES IN DIRECT SPENDING										
Universal Service Fund Provisions:										
Antideficiency Act Exemption:										
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	0	107	47	3	2	1	0	0	0	0
Broadband Service Fund:										
Estimated Budget Authority	70	400	500	500	500	500	500	500	500	500
Estimated Outlays	0	426	513	500	500	500	500	500	500	500
Audits:										
Estimated Budget Authority	20	40	41	42	42	43	44	45	46	47
Estimated Outlays	19	39	41	42	42	43	44	45	46	47
Rural Health Care Program:										
Estimated Budget Authority	5	8	13	13	13	13	13	14	14	14
Estimated Outlays	0	8	12	13	13	13	13	14	14	14
Unlicensed Use of Television—Broadband Spectrum:										
Estimated Budget Authority	0	25	0	0	50	25	0	0	0	0
Estimated Outlays	0	25	0	0	50	25	0	0	0	0
Total Changes:										
Estimated Budget Authority	95	473	554	555	605	580	557	559	560	561
Estimated Outlays	19	605	613	558	607	581	557	559	560	561
CHANGES IN REVENUES										
Estimated Revenues	95	448	553	554	555	556	558	559	560	561
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
Authorization Level	40	45	50	55	60	0	0	0	0	0
Estimated Outlays	9	28	39	47	52	43	17	6	2	1

Direct spending

Several provisions of H.R. 5252 would affect direct spending. Title II would expand or create new programs in the Universal Service Fund. Title VI would modify terms and conditions governing the use of certain radio frequencies by users without licenses from the FCC.

Universal Service Fund. Created by the Telecommunications Act of 1996, the USF redistributes income from interstate telecommunications carriers to other carriers providing services to high-cost areas, low-income households, schools, libraries, and nonprofit rural health care providers. The cash flows from the USF appear in the budget as revenues (for fund collections, discussed below) and direct spending (for amounts distributed from the fund).

Title II would create new programs within the Universal Service Fund, expand an existing program, and permanently exempt the fund from the provisions of the Antideficiency Act. CBO estimates that enacting these provisions would increase direct spending by about $5.1 billion over the 2007–2016 period and increase revenue collections by $5.0 billion over the same period.

Antideficiency Act Exemption. Section 211 would permanently exempt the Schools and Library program with the USF from provi-

sions of the Antideficiency Act. Under current law, the program has a temporary exemption from the act that will expire at the end of calendar year 2006. Without this exemption, the Schools and Library program would be unable to obligate funds until sufficient resources to meet its obligation are available.

The Schools and Libraries program distributes funds to eligible institutions to provide affordable Internet and telecommunications services. When the USF receives and approves a grant application, it obligates funds to be paid to the recipient pending compliance with certain grant conditions. Under current law, the fund has temporary authority to obligate funds without sufficient amounts available to meet those obligations. H.R. 5252 would make that authority permanent, allowing the program to obligate and spend funds faster than it would without the exemption. CBO estimates that this provision would increase the rate of spending and thus increase costs by about $160 million over the 2007–2016 period.

Broadband Service Fund. Section 252 would create a new program to promote the development of broadband service in areas of the United States that the FCC determines to be unserved. The program would provide financial assistance for certain broadband service providers to install equipment and infrastructure to offer broadband service in certain areas. H.R. 5252 would limit the amount that could be obligated under this program to $500 million per year. Based on the administration of existing USF programs, CBO expects that the proposed Broadband Service Fund would operate at the maximum authorized level. CBO estimates that this provision would increase direct spending by nearly $4.5 billion over the 2007–2016 period. (The provision also would increase revenue collections by about $4.5 billion over the same period.)

Audits. Section 258 would require the FCC to periodically audit entities that receive funds from the Universal Service Fund, as well as communications carriers who contribute to the fund. The audits would be administered by the Universal Service Administrative Company to determine how recipients use the support received from the fund and how costs of services provided by fund contributors differ between service areas. Based on information from the FCC about the cost of audits, CBO estimates that this provision would increase the expenses (and revenue collections) of the fund by about $400 million over the 2007–2016 period.

Rural Health Care Program. Section 260 would expand the population of eligible health care providers that could receive support under the Rural Health Care Support Program. This program provides reduced rates for Internet and telecommunication services to certain rural public and nonprofit health care providers. H.R. 5252 would increase the pool of eligible health care providers to include critical access hospitals, hospice providers, school health clinics, and others. CBO estimates that this provision would increase direct spending by about $115 million over the 2007–2016 period (and result in increased revenue collections of $120 million over the same period).

Unlicensed Use of Television Broadcast Spectrum. Title VI would modify the FCC's policies regarding the use of television broadcast spectrum by unlicensed devices. The commission's recently announced timetable for unlicensed use of those frequencies set a goal of having equipment deployed after the transition to digital tele-

vision is completed in 2009. Under the FCC's plan, such devices could operate on a secondary basis on most of the frequencies spanning channels 5 through 51. This act would modify that plan by directing the FCC to allow certified unlicensed devices to begin operating on channels 2 through 51 beginning within 270 days after the act is enacted, subject to certain limitations. CBO estimates that enacting H.R. 5252 would reduce offsetting receipts from future spectrum auction proceeds by $100 million over the 2009–2012 period, relative to current law.

CBO anticipates that allowing unlicensed devices on channels 2 through 4 would result in fewer channels being auctioned for new broadcast stations relative to current law, thereby reducing offsetting receipts by an estimated $75 million by 2012. Although unlicensed devices would operate on a secondary basis, experience suggests that the presence of such incumbents would put pressure on the FCC to limit the number of new licensees in the broadcast bands. CBO expects that this impact would be most pronounced in major markets because of the relative scarcity of spectrum in those areas. For this estimate, CBO assumes that enacting this act would result in a 50 percent reduction in the $150 million CBO projects otherwise would be collected from auctions of licenses for those channels.

In addition, CBO expects that allowing unlicensed operations on channels 2 through 4 would reduce demand for some of the licenses scheduled to be offered by the FCC in 2008 as part of the "700 megahertz" auction. The impact on that auction is likely to be small, however, because of the significant engineering constraints on use of those channels by secondary devices. For this estimate, CBO assumes that those three channels could serve as a substitute for only 20 percent of the licenses being auctioned, and that the effect on the value of those licenses would fall by no more than 1 percent. Based on CBO's baseline projection of receipts from that auction, which totals $12.5 billion, the net impact of this act on the 700 megahertz auction would total about $25 million.

Revenues

As noted above, assessments made by the Universal Service Fund to support its programs are recorded in the budget as revenues, and are calculated to generate an amount sufficient to cover the costs of the fund. All USF spending is supported by assessments on telecommunications firms; thus, CBO estimates that new revenues collected by the fund to support the proposed Broadband Service program, program audits, and the expansion of the Rural Health Care program would total $5.0 billion over the 2007–2016 period.

Several provisions of the act could increase federal revenues as a result of the collection of additional civil and forfeiture penalties assessed for violations of FCC laws and regulations. Collections of civil penalties and forfeiture penalties are recorded in the budget as revenues. CBO estimates that any additional revenues that would result from enacting H.R. 5252 would not be significant because of the relatively small number of cases likely to be involved.

Spending subject to appropriation

Title X would establish a program within the National Science Foundation (NSF) to support basic research in advanced information and communications technology. The NSF would make grants designed to improve the availability and affordability of advanced communications services to higher education and nonprofit research institutions. The act would authorize the appropriation of $250 million over the 2007–2011 period for this grant program. Based on the spending patterns of similar programs, CBO estimates that outlays over this period would total $175 million.

Title X would create two new administrative offices at the FCC—the Office of Indian Affairs and the Office of Consumer Advocate. Other provisions of the act would require the FCC to undertake numerous rulemakings regarding the USF Broadband program, video service and cable franchising, consumer protection requirements for mobile services, and appropriate use of Caller–10 services, among others. The act would also require the FCC to prepare a number of reports for the Congress concerning the availability of video services, proposals to allow radio and television content to be broadcast in school buses, the availability of broadband service, and the impact of spectrum leasing rules. Based on information from the FCC, CBO estimates that these new requirements would cost about $35 million over the 2007–2011 period. Under current law, the FCC is authorized to collect fees from the telecommunications industry sufficient to offset the cost of its regulatory and user information programs. CBO assumes that the additional costs of implementing these administrative provisions of H.R. 5252 would be offset by an increase in collections credited to the FCC's annual appropriations and would have no significant net cost.

Estimated impact on State, local, and tribal governments: H.R. 5252 contains several intergovernmental mandates as defined in UMRA. Specifically, the act would:

- Limit the fees that intergovernmental entities—primarily municipal governments—may impose on providers of cable services;
- Permanently extend a prohibition on certain state and local taxes on the provision of certain Internet access services;
- Impose a three-year moratorium on certain new state and local taxes that apply to mobile telephone service;
- Prohibit intergovernmental entities—primarily municipal governments—from imposing certain requirements on providers of cable services and from negotiating future changes in franchise agreements including, the structure of franchise fee payments and the number of public, educational, and governmental (PEG) channels provided by the video service provider;
- Eliminate appeals regarding two recent FCC decisions that relate to an Internet-based telephone service known as VOIP;
- Preempt state laws that prohibit municipal governments from providing services for Internet access;
- Preempt a variety of other state and local laws with respect to the granting of franchises for cable service, consumer protection, caller-ID, and certain requirements that information be available to the public;
- Require local franchise authorities to adhere to certain timelines for granting franchises; and

- Require certain state and local government entities to notify and file reports with the FCC.

CBO estimates that the net direct costs of these mandates to state and local governments would exceed the threshold established in UMRA ($64 million in 2006, adjusted annually for inflation) in at least one of the first five years after enactment. Those costs, in the form of forgone revenues, would peak during the 2008–2009 period and total at least $150 million—land perhaps as high as $400 million—in each of those two years. Costs would decrease after 2009 but would likely remain above $100 million through 2011. Most of those costs would stem from the first three provisions outlined above. The following discussion focuses on the costs of these provisions.

Estimated direct costs of Mandates to State and local governments

UMRA includes in its definition of the direct costs of a mandate the amounts that state and local governments would be prohibited from raising in revenues to comply with that mandate. The most significant direct costs of H.R. 5252 would be the revenues that state and local governments would likely collect under current law from providers of video service, Internet access services, and mobile phone service but would be precluded from collecting under H.R. 5252.

Limiting Fees Paid by Providers of Video Service. Title III would establish new provisions for the franchising of video service providers. In doing so, the act would place requirements on certain units of local government, preempt their authority to regulate and negotiate with video service providers, and prohibit some state and local governments from charging certain fees to providers of video services. The act also would prohibit certain local governments from imposing franchise fees on services delivered using certain technologies. At the same time, by increasing competition in some markets, enacting the act likely would lead to more people subscribing to cable services that are subject to local franchise fees. Thus, local governments would gain new revenues that partially offset these costs.

Under current law, Local Franchise Authorities (LFAs) in most states negotiate compensation with cable providers seeking to serve their franchise area. (In at least four states, the law provides for a statewide franchise). Each agreement is different, and the amount of forgone revenue from H.R. 5252's prohibition would depend on the specifics of each franchise agreement preempted by the act.

Current federal law caps fees for the franchise at 5 percent of gross revenues—a fee maintained in H.R. 5252. Local governments, however, also negotiate fees for certain additional services that the video service provider must supply. These services include public, educational, and governmental programming and a type of private network for some public entities called an institutional network (INET). INETs typically connect schools, police and fire stations, libraries, and other municipal buildings. On average, these fees total between 1 percent and 3 percent of the gross revenues of the provider. Based on the franchise agreement that an LFA has with cable provider, provisions of H.R. 5252 would limit fees that those LFAs with an INET may charge video providers. There is a great

deal of uncertainty as to the number of franchise areas with INETs, but government sources suggest that no more than half of franchise areas have one.

By prohibiting some intergovernmental entities from charging certain video service providers more than 1 percent of gross revenues to provide PEG programing and other services, H.R. 5252 would lead to a loss in state and local revenues. CBO estimates that the net costs of this prohibition—that is, the amount of revenues state and local governments would no longer be able to collect, offset by franchise fees generated from increased competition—could total about $100 million in some years during the 2007–2011 period. Such costs, however, could be significantly lower, depending on the pace at which there is competition in the market for video services and the changes in technology for the delivery of such services.

Permanent Extension of the Internet Tax Freedom Act. Section 1013 would permanently extend the moratorium on certain state and local taxation of Internet access and would eliminate an exception to that prohibition that allows certain states to continue collecting such taxes. Under current law, the moratorium is set to expire on November 1, 2007.

The Internet Tax Freedom Act (ITFA) currently prohibits state and local governments from imposing taxes on Internet access until November 1, 2007. Based on information from government and industry sources, CBO estimates that permanently extending the ITFA would result in revenue losses for about 25 states and some local governments totaling between $100 million and $175 million, annually, beginning in November 2007. CBO expects that forgone revenues from this provision would peak within the next few years and then decline due to the rapidly decreasing prices for services that could have been subject to tax in the absence of this provision and the relatively slower growth of new subscribers.

Moratorium on New Taxes on Cell Phone Services. Title XII would impose a three-year moratorium on certain new taxes imposed by state and local governments that apply to the provision of mobile telephone service. State and local governments would be prohibited from raising the tax rate on current taxes and from enacting any new statutes that would impose other taxes or fees on mobile telephone services over the next three years: 2007, 2008, and 2009.

There is significant uncertainty about the number of governments that would impose taxes in the absence of this legislation and the amount of revenue they would raise. Based on information from industry sources, however, CBO expects that many local governments likely would act to either raise current tax rates or impose new taxes on mobile telephone services. Over the past five years, subscribers to mobile phone services have been increasing by more than 10 percent annually. At the same time, consumer expenditures for and use of traditional wireline phones has decreased. State and local governments have traditionally taxed such telephone services and these market forces have had a negative impact on state and local tax collections. It is likely that at least some of these governments that have not already moved to recoup those revenue losses would do so in the absence of this legislation.

While it is difficult to predict what state and local governments would do in the absence of the moratorium, based on governmental and industry sources, CBO estimates that, in aggregate, they would likely forgo between $100 million and $150 million annually in each of the three years the moratorium would be in effect.

Estimated impact on the private sector: H.R. 5252 would impose numerous private-sector mandates as defined in UMRA on providers of telecommunications services, IP-enabled voice services, Internet service providers, manufacturers and distributors of television receivers, broadcasters, video and satellite service providers, and others. At the same time, the act would provide some forms of regulatory and tax relief for portions of those industries. Based on information from government and industry sources, CBO estimates that the aggregate costs of complying with the mandates in H.R. 5252 would exceed the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

The major provisions of the act would impose private-sector mandates by:

- Imposing new standards for multimode devices;
- Increasing payments by telephone companies to the Universal Service Fund;
- Imposing new regulations on interconnections among providers of telephone services;
- Imposing new requirements on video service providers regarding franchise applications, interconnection with other providers, reporting and termination fees;
- Regulating video content by:
  - —Requiring satellite carriers to serve subscribers in Alaska and Hawaii;
  - —Requiring manufacturers to include output control technologies in their products that receive over-the-air digital broadcasts; and
  - —Making changes to certain FCC licenses related to transmissions on digital technologies;
- Requiring broadcasters and retailers to use various methods to educate consumers about the transition to digital broadcasts;
- Imposing energy standards on digital converter boxes;
- Requiring cable companies to carry analog video streams;
- Requiring broadcasters and multiple-channel video programming distributors to provide video description for the blind;
- Requiring video service providers to prevent easy access to certain commercial matter during the broadcast of children's programming;
- Requiring Internet service providers to meet consumer protection guidelines;
- Prohibiting the transmission of false or misleading information over caller-ID services; and
- Requiring some providers to comply with reporting requirements, customer service and consumer protection requirements, as well as other incremental changes in industry regulations.

Based on its review of the legislation, CBO expects that the mandates contained in the titles on Interoperability (title I); Universal Service Reform and Interconnection (title II), Video Franchising (title III), Video Content (title IV), Digital Television (title VII), Protecting Children (title VIII), Internet Consumer Bill of Rights (title IX) and Truth in Caller ID (title XIII) would have the greatest cost to private-sector entities as defined in UMRA. What follows is a summary of the major provisions related to private-sector mandates.

Interoperability: Standards for multimode devices

Section 151 contains a mandate on manufacturers of multimode devices. Multimode devices, as the term is used in the act, refers to cell phones that contain multiple transmitters, for example a "Wi-Fi" or "Bluetooth" transmitter. Manufacturers of such devices would be required to meet standards governing the acceptable level of radio frequency exposure. The cost of complying with this mandate would depend on the regulations to be issued by the FCC.

Universal Service Fund

Contributions to the Universal Service Fund. Section 211 would impose mandates on all communications service providers. The Universal Service Fund helps to underwrite telephone service predominantly for rural and, low-income customers. The act would require the FCC to develop a new contribution system and require all telecommunications companies—including Internet phone companies and broadband providers that currently do not contribute to universal service support—to make payments to the fund. Under current law, providers must pay fees into the USF on revenues received from providing interstate telecommunication service; revenues from intrastate services are exempt. This section would expand the base from which fees are derived for universal service to all forms of revenues. In the aggregate, the level of universal service fees is determined by the spending by the USF.

Fee Increases to the Universal Service Fund. Section 252 would establish a new program (the Broadband for Unserved Areas Program) funded by the Universal Service Fund to encourage the deployment of high-speed Internet access in unserved rural areas. The program would consist of grants distributed on a competitive basis and be administered by the Universal Service Administrative Company. The act would cap spending for these grants at $500 million per year with unobligated balances used to support universal service more generally.

To pay for the program, the FCC would have to raise universal service fees on telecommunications carriers since, under section 254(d) of the Communications Act, universal service fees have to be sufficient to preserve universal service and this new program is to be funded under section 254(d). CBO estimates that the additional fees collected for this program would exceed $400 million from fiscal 2008 onward.

Section 260 would increase the number of categories of rural health care providers eligible for subsidies under the Rural Health Care program of the Universal Service Fund. CBO estimates that these added fees will cost the industry roughly $10 million annually beginning in 2008.

Regulation of interconnection

Section 213 would prohibit an incumbent telephone service provider from refusing to interconnect and carry the traffic of another carrier merely because the second provider is an IP-enabled carrier. Additionally, this section would eliminate the current exemption on IP-enabled voice carriers from "paying compensation for interstate traffic owed to another provider or carrier solely on the basis that such traffic is IP-enabled * * *" Based on information from government and industry sources, the incremental cost of making interconnection available to IP-enabled carriers would be minimal. Secondly, this section would require IP-enabled voice carriers to pay all the traffic-related access charges that other telephone service providers currently must pay. According to industry estimates, IP-enabled telephone providers would pay about $200 million in such access charges in 2007 and increasing amounts thereafter. Those payments would be made to other telephone companies that are currently required to pay such charges and would represent within-industry transfers.

Section 213 would require IP-enabled telephone providers to notify customers detailing the customer's responsibility for ensuring access to emergency services. According to industry sources, the cost to provide such notices would be small.

Section 257 would require voice communications providers to label traffic with sufficient information to allow for traffic identification by other communication networks that transport, transit, or terminate such traffic, including information on the identity of the originating provider, the calling and called parties. Currently, identifying information is often lost as traffic is passed from network to network. Without identifying information the carrier completing the call cannot identify the carrier originating the call and collect payment for the service of completing the call. CBO has no basis to estimate the cost of this labeling requirement.

Regulation of the video services franchising process

Regulation of Franchise Agreements. Section 312 would require video service providers to use a standard application form when applying for a new franchise. The form would require no additional information compared to the information applicants currently provide to a franchise authority during the application process. Consequently, this mandate should impose no new costs.

Section 331 would establish requirements for franchise agreements and place limits on the fees and contributions that video service providers have to make under such agreements. The act would on average lower the fees franchisees currently have to pay. The section does permit the parties to negotiate tradeoffs between the franchise fees and the PEG contributions. Furthermore, under the legislation franchising authorities could no longer require a video service provider to construct a new institutional computer network. (Such networks are typically used by public agencies or enterprises.)

Section 337 would prohibit discrimination by video service providers against potential subscribers on the basis of the race, religion, or income of that group. Discrimination based on race or religion is currently prohibited under law. The act would impose a mandate by prohibiting video service providers from discriminating

based on income. Existing franchise agreements tend to have build-out requirements, requiring the franchisee to serve all households in areas where the minimum population density is above a certain threshold. But until now the franchises were required to cover the entire area under the jurisdiction of the franchising authority. Under the act, since the applicants would be able to define their service area, video service providers could serve only portions of a community. While economic redlining typically occurs in non-network goods, such as housing, some companies may try to serve only areas with relatively higher incomes. The act would prohibit such actions. CBO has no basis to estimate the prevalence of such economic discrimination in the absence of this legislation, nor the cost of ending such discrimination.

Interconnection. Section 333 would require multiple video service providers that serve a single franchise area to interconnect to transmit the public, educational, or governmental use channels without material degradation. If the video service providers cannot come to terms voluntarily on how to implement this requirement, they would have to comply with regulations issued by the FCC regarding interconnecting and cost-sharing. Estimates of the costs of these connections vary between $5 million and $30 million annually, depending on the number of new franchises. In addition, the installation of interconnection equipment could add another 10 percent to that cost in a one-time expense.

Reporting Requirements for Video Service Providers. Section 315 would require companies to provide an annual report to the FCC on the family tiers—packages of channels free of obscene and indecent programming—the company offers, the prices, marketing efforts and subscription levels of such family tiers. Such a report would impose low costs on the companies.

In addition, at the request of the franchise authority, the video service providers would have to make their books and records available for periodic audits. Such a request would not impose substantial cost upon the video service provider directly.

Prohibition on Early Termination Fees. Section 336 would amend the Communications Act to make it "unlawful for a video service provider to charge a subscriber an amount in excess of one month's subscription fee as a penalty or service charge for terminating a subscription to the video service provider's service before the date on which the subscription term ends." CBO interprets this language to include only the service or penalty fee, and not any fee for missing or damaged equipment, which would not be a service fee.

Many video service providers have year-long agreements with penalty fees for early termination. This provision is not retroactive so it would not affect existing contracts. The cable companies have already acquired their customers, paid for their investment and are willing to concentrate on offering month-to-month contracts. (Satellite companies are exempt.) This provision would mostly affect over-builders: that is, companies entering into the territory of an existing cable franchise. Such companies often have early termination clauses in their service agreements. Based on information from industry sources, CBO estimates that limiting these clauses would cost such new companies about $10 million to $12 million annually over the next five years.

Regulation of video content

Satellite Services. Section 401 would expand the requirements on current satellite carriers and service resellers to provide service to subscribers in Alaska and Hawaii that is comparable to what they provide in the contiguous United States. This section also would require that each satellite for which a future license is to be used "for service in the contiguous United States" for direct-to-home video services or for any other direct-to-consumer service satisfy capability requirements. (Those requirements would be stated in terms of earthbound signal strength and satellite reception for providing service to Alaska and Hawaii.) Both the specific satellite capability requirements as well as the extent of the corresponding service provision (that is, to large cities in Alaska and Hawaii or to the entirety of each state) varies by type of satellite service. According to industry sources, the cost to comply with this provision would increase the cost of a satellite carrier to comply with a license by about 15 percent.

Digital Content Protection. Sections 452 and 454 would authorize and ratify earlier FCC Reports and Orders mandating the use of output control technologies ("broadcast flags") and approving—based on interim criteria—a specific set of technologies for that purpose. As a result, those sections would impose several mandates on the private sector. In particular, section 452 would require that an approved output control technology be incorporated into television receivers, digital recording equipment, and certain other devices that directly or indirectly receive over-the-air digital televison broadcasts. Section 454 would require the commission to initiate a process that would impose similar controls on digital radio.

CBO expects that the costs to the private sector of complying with the broadcast flag requirement of section 452 would not exceed the annual threshold established in UMRA for private-sector mandates because the expense of complying with it is limited by the several factors, including: (i) the approved output control technologies have already been implemented in microelectronic components that are inexpensive to manufacture, avoiding thereby as well expensive design efforts for new chips; and (ii) the costs to license the intellectual property embodied in the approved output control technologies are limited to administrative fees. In contrast, the costs to implement the requirements of section 454 would depend on the outcome of FCC proceedings.

Licensing Terms for Broadcast Flag Technologies. Section 452(d)(3) would modify the terms under which the output control technologies approved in currently-signed licenses for some of the output control technologies considered in previous rulemaking by the FCC (FCC 03–273—In the Matter of Digital Broadcast Content Protection, Report and Order and Further Notice of Proposed Rulemaking, November 4, 2003) and (FCC 04–193—In the Matter of Digital Output Protection Technology and Recording Method Certification, Order, August 12, 2004). This section would thereby impose a private-sector mandate by requiring that licenses for approved output control technologies for equipment receiving over-the-air digital television broadcasts be modified to remove clauses which prevent licensees from asserting patent rights; otherwise, the associated technologies lose their approval. CBO has no basis to estimate the cost of this mandate.

Compulsory License Terms and Conditions. Section 453 would create compulsory licenses for certain parties that make use of digital audio broadcasts. It also would establish the conditions that such entities must satisfy in order to qualify for them. It thus would impose two mandates on the private sector requiring that:

- Organizations that monitor digital radio broadcasts or satellite transmissions, either for allocating royalties due to copyright owners or for providing other types of measurement services (e.g., for determining the frequency of news stories about Members of Congress) receive a free, or de minimis-cost license for "access(ing) and retransmit(ing) any content contained in such transmissions protected by copyright protection or similar technologies" in order to carry out their activities; and
- Organizations benefitting from such free or de minimis-cost licenses "employ reasonable methods to protect" the digital audio content they access under those licenses "from further distribution."

CBO cannot estimate the cost to the private sector of these requirements. Currently, organizations making such use of audio broadcasts or transmissions that are affected through existing technology do not pay royalties, and do not incur substantial costs to protect that content. The two provisions of section 453 would effectively maintain a no-royalty regime under a new technology—digital audio—and private-sector sources cannot project either forgone royalties or additional costs of protecting the associated digital content.

Digital television education

H.R. 5252 includes several provisions to educate consumers about the nation's transition to digital-only television broadcasting by February 2009. Section 701 would impose mandates by requiring manufacturers to put labels on all analog TV sets sold in the United States warning consumers of the pending analog switch off in February 2009. Section 701 also would require that a retailer of analog-only television sets that sells such television sets via direct mail, catalog, or electronic means to include in all advertisements or descriptions of such television set a warning about the transition to digital-only broadcasts. The cost of such labeling is likely to be minimal. Television sets already have printed packaging and screen labels. Changing these labels is not likely to be expensive.

Section 701 also would impose notification requirements on broadcasters for their public service announcements (PSAs). Each broadcast television licensee would be required to air two 30-second public service announcements each day for three months beginning December 2007 to inform consumers about the federally subsidized digital-to-analog convertor box discount program. Beginning November 17, 2008, broadcasters would have to start running PSAs alerting consumers to the coming switch of analog broadcasts. Such public service announcements must be in English, Spanish, and other languages as appropriate.

CBO assumes that the broadcasters will be making many such announcements on their own to let their audience know of the shift in their broadcast frequency during the transition to digital television. CBO also assumes that the mandated public service announcements would replace other public service announcements

during those periods. Consequently, CBO expects that this requirement for public service announcements would not impose substantial additional cost on broadcasters.

Section 701(b) requires the FCC to establish a consumer outreach plan, including a requirement that all the licensed broadcasters in a designated market area submit a joint plan to the FCC that addresses the public outreach and public service announcement requirements. This joint plan would include a description of how each broadcaster intends to fulfill the PSA requirements, market research by each broadcaster regarding projected local consumer demand for converter boxes, and be shared with retailers in the area to help inform their stocking plans. CBO estimates that these requirements could be fulfilled at a small cost for each television market. The report to the FCC would be due July 15, 2007.

Energy standards for digital television converter boxes

Section 701 would require the Assistant Secretary of Commerce for Communication and Information, in consultation with the Secretary of Energy, to set the energy standards for digital-to-analog set-top converter boxes. The new standards would have to be set within one year of enactment. Under current law, the converter boxes are supposed to go on sale in January of 2008. If the energy standards do not go into effect until a year after passage, which would be October 2007 at earliest, the two-month gap would not give the supply chain sufficient time to stock the stores with the requisite boxes.

The energy standards themselves could lower the costs of the manufacturers of digital to analog set top converter boxes, if the national standards are lower than the standards set by various states that have such regulations. The cost of the mandate would depend on final rules set by the Department of Commerce.

Carriage of analog video streams

Section 701(d) would require cable operators to carry both the original digital video stream as well as a downconverted analog version of it. The legislation would permit such down conversion declaring that it is not material degradation. The section also would permit the cable companies to convert high definition digital video streams into standard definition digital video streams. Cable companies with capacity of less than 550 megahertz are exempted from the requirement to carry both streams. The National Cable and Telecommunications Association has committed its members to carry both streams. Consequently, the industry is already implementing the policy. The mandate would become effective on the day that analog television transmissions cease.

Video description rule to aid the blind

Section 702 would reinstate the video description rules of the FCC report and order entitled Implementation of Video Description of Video Programming (15 FCCR 15,230). Reinstating the provisions of that report and order would constitute a new mandate by requiring affiliates of the top four commercial television broadcast networks in the top 25 television markets to provide at least 50 hours per calendar quarter of prime time or children's programming with video description. This section also would require each

multichannel video programming distributor (MVPD) with at least 50,000 subscribers to provide at least 50 hours per calendar quarter of prime time or children's programming with video description on each of the top five nationally distributed networks they carry. In addition, all broadcast stations and MVPDs with video description capability, regardless of market size, would be required to "pass through" any video description received from network programs they distribute. According to data from the FCC, more than 80 percent of broadcast affiliates and almost 70 percent of MVPDs in their top 25 respective markets possessed video description capability by the year 2000. Based on information from government sources, CBO estimates that the incremental cost to the industry of implementing the mandates in section 702 would not exceed $15 million annually over the next five years.

Protecting children

Title VIII would impose a mandate on video service providers by requiring them to follow new guidelines to be established by FCC to prevent the offering of child pornography. The cost of this mandate would depend on the regulations established by FCC. Further, this title would make it the responsibility of video service providers, as well as cable operators, multichannel video programing distributors, satellite carriers, providers of over-the-air broadcast programming, and broadband providers to prevent interactivity with commercial matter during the broadcast of any children's programming. The mandate would take effect immediately. And finally, this title contains a mandate on owners and operators of commercial web sites that contain "sexually explicit" materials. Owners of these sites would be required to comply with new requirements to be set by the FTC. The cost of complying with these mandates would depend on the results of future rulemaking.

Consumer Internet Bill of Rights

Section 903 contains a Consumer Internet Bill of Rights that would direct Internet service providers to allow subscribers to access and post lawful content, access the web pages of the consumers' choosing, run any applications of the consumers' choosing, connect any legal devise to the network, and receive "clear and conspicuous" information about connection speeds, capabilities, and pricing. At present, most if not all Internet service providers provide the access required by this section. This mandate would preempt businesses from changing their current practices. Consequently, these rights could be provided at little cost to the Internet service providers.

In addition, section 905 would require Internet service providers to offer high-speed Internet services without requiring consumers to also subscribe to additional telecommunications services. Currently, most Internet service providers and cable companies offer stand-alone Internet access. Phone companies are also offering stand-alone packages in their fiber-optic offerings. Similarly, most wireless companies that are in the process of rolling out Internet access also offer stand-alone versions of the service. Such service may require purchase of special cards to use with computers. Because the industry is largely moving in this direction, the incremental cost to comply with this mandate would be relatively small.

Truth in caller-ID

By prohibiting certain transmissions of caller-ID information, section 1302 contains a mandate on persons who would legitimately need to transmit such information. This section would make it illegal to transmit misleading or inaccurate caller-ID information, but would require the FCC to promulgate regulations to implement this section. The FCC would have the discretion to exempt "legitimate" reasons to transmit false caller-ID information (for example, battered women's shelters). The cost of complying with this mandate, if any, would depend on the regulations established by the FCC.

Previous CBO estimate: On May 3, 2006, CBO transmittd a cost estimate for H.R. 5252, the Communications Opportunity, Promotion, and Enhancement Act of 2006, as ordered reported by the House Committee on Energy and Commerce on April 27, 2006. That version of the legislation did not contain provisions to add or change Universal Service Fund programs or permit the use of unlicensed radio spectrum. The House version contained a broader provision to cap certain fees charged by local franchising authorities, which would result in net revenue losses to those entities totaling between $100 million and $350 million annually by 2011. Further, the House legislation did not contain the moratorium on new taxes placed on mobile telephone services or the permanent extension of the Internet Tax Freedom Act. CBO's cost estimates reflect the different provisions in the two versions of H.R. 5252.

The Senate version of H.R. 5252 has a provision in common with the House version of the act. Both versions of the legislation would require Internet service providers to offer stand-alone Internet service—broadband in the House version and the highest Internet access speed offered in the case or the Senate version. In both instances, CBO noted that most of the Internet service providers already offered stand-alone service, and thus, that the likely cost of that private-sector mandate would be low.

Estimated prepared by: Federal costs: Susan Willie and Kathleen Gramp; Impact on State and local and tribal governments: Sarah Puro; Impact on the private sector: Craig Cammarata, Fatimot Ladipo, Nathan Musick, Amy Petz, and Philip Webre.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The FCC may issue regulations to implement the requirement set forth in the reported bill that touch on a number of aspects of communications policy with implications for large portions of the communications industry.

ECONOMIC IMPACT

H.R. 5252 would not have an adverse economic impact on the nation's economy. This bill would facilitate the deployment of advanced communications networks which would trigger significant investment by communications companies and the competition in voice and video services facilitated by the bill is projected to result in billions of dollars worth of savings for American consumers.

PRIVACY

The reported bill would not materially impact the personal privacy of U.S. citizens.

PAPERWORK

The reported bill has some reporting requirements for various sectors of the communications industry but should not significantly increase paperwork requirements for individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would provide that the legislation may be cited as the "Advanced Telecommunications and Opportunities Reform Act" or the "Communications Act of 2006".

Section 2. Amendment of Communications Act of 1934

This section clarifies that unless otherwise specified, any amendment or repeal is to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

Section 3. Table of contents

This section sets forth the table of contents for this Act, which is comprised of fourteen separate titles.

TITLE I—WAR ON TERRORISM

SUBTITLE A—CALL HOME

Section 101. Telephone rates for members of armed forces deployed abroad

Section 101 would require the FCC to take such action as may be necessary, except for rate regulation, to reduce phone rates for Armed Forces personnel deployed overseas.

Subsection 101(a) would require the FCC to take such action as may be necessary to reduce telephone rates for Armed Forces personnel deployed overseas, including the waiver of government fees, assessments, or other costs, but would preclude the Commission from regulating rates to do so.

Subsection 101(b) would require that in seeking to reduce phone rates, the Commission shall (1) evaluate and analyze the costs of calls to and from official duty stations including vessels whether in port or underway, (2) evaluate methods of reducing rates including deployment of new technology such as Voice over Internet Protocol (VoIP) or other Internet protocol technology, (3) encourage providers of telecommunications to adopt flexible billing procedures and policies for calls by Armed Forces personnel or to such per-

sonnel from their families, and (4) seek agreements with foreign governments to reduce international surcharges on phone calls.

Subsection 101(c) defines "armed forces" and "military base" as used in Subtitle A.

Section 102. Repeal of existing authorization

Section 102 would repeal section 213 of the Telecommunications Authorization Act of 1992 (47 U.S.C. 201 note), which currently requires the FCC to seek to reduce phone rates for Armed Forces personnel in certain specified countries.

SUBTITLE B—INTEROPERABILITY

Section 151. Interoperable emergency communications

Subsection 151(a) would amend section 3006 of the Deficit Reduction Act of 2005, Public Law 109–171 (47 U.S.C. 309 note), by adding requirements for awarding the $1 billion in grant funds made available under the Deficit Reduction Act for public safety agencies to improve interoperable emergency communications. The new subsection also would require the allocation of funds for interoperable communications system equipment, coordination and planning, and strategic technology reserves that would provide key public safety officials with a cache of emergency interoperable communications equipment during an emergency or major disaster. This section would also amend the Deficit Reduction Act to require that the grant program be administered by the Secretary of Homeland Security instead of the Secretary of Commerce as currently required under that Act.

New subsection 3006(d) would require the Secretary of Homeland Security to make at least 25 percent of grant funds available for equipment that can utilize reallocated public safety spectrum, or for equipment that can enable interoperability with systems or networks that can utilize such spectrum. The Secretary would be required to allocate a majority of such funds to public safety agencies (as defined by section 3006) based on threat and risk factors used by the Department of Homeland Security (DHS) to allocate discretionary grants under the heading "Office for Domestic Preparedness, State and Local Programs" in the DHS Appropriations Act of 2006, P.L. 109–90. The Secretary would be required to allocate the remainder of such funds equally to each State for allocation by the States to public safety agencies.

New subsection 3006(e) would require the Secretary of Homeland Security to make at least 25 percent of the grant funds available for interoperable emergency communications coordination, planning, and training grants. The Secretary would be required to allocate a majority of such coordination, planning and training grants to public safety agencies (as defined by section 3006) based on threat and risk factors used by DHS to allocate discretionary grants under the heading "Office for Domestic Preparedness, State and Local Programs" in the DHS Appropriations Act of 2006, P.L. 109–90. The Secretary would be required to allocate the remainder of such coordination, planning, and training grants equally to each State for allocation by the States to public safety agencies.

New subsection 3006(f) would require the Secretary of Homeland Security to make up to 25 percent of the grant funds available to

establish and implement a strategic technology reserve to preposition or secure interoperable communications systems in advance for immediate deployment in an emergency or major disaster. In allocating grants, the Secretary would be required to consider the continuing evolution of communications technologies and devices and to ensure that a substantial part of the reserve involves contracts for rapid deployment of equipment, supplies, and systems rather than warehoused equipment. Notwithstanding this requirement, the Secretary would be required to ensure that reserves include equipment on hand for the Governor of each State and other key emergency response officials. The Secretary would be required to allocate a portion of the strategic reserve funds for block grants to each State to establish a reserve within its borders and a portion for regional Federal reserves to be held in each of the Federal Emergency Management Agency's regional offices and each of the noncontiguous States.

New subsection 3006(g) would require the Secretary of Homeland Security to identify and if necessary encourage the development and implementation of consensus standards for interoperable communications systems to the greatest extent possible. It would condition grant eligibility on submission of an application at such time and in such form as the Secretary of Homeland Security may require. Such application would be required to include a detailed explanation of how grants would be used to improve local communications interoperability and ensure inter-agency interoperability during an emergency or major disaster. This section would require assurance by grant applicants that they would purchase equipment and systems compatible with the flexible and open architecture requirements promulgated by DHS pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108–458 (IRTPA). Grant administrators would also be required to obtain assurances that purchases would meet voluntary consensus standards developed by DHS under section 7303(a)(1)(D) of IRTPA and would be consistent with the common grant guidance established under section 7303(a)(1)(H) of that Act.

New subsection 3006(h) would require the Secretary of Homeland Security, in consultation with the FCC, to promulgate regulations to implement the new provisions required by Subsection 151(a) within 90 days of enactment, specifically with respect to new subsections 3006(d) through (f).

Subsection 151(b) would require the FCC within 180 days of enactment to streamline its process, if consistent with the public interest, for certifying multi-mode devices such as a wireless phone with more than one type of radio transmitter.

Subsection 151(c) would require the FCC, in coordination with the Secretary of Homeland Security, within 1 year, to evaluate the technical feasibility of creating a back-up emergency communications system that takes into account next generation and advanced technologies. In doing so, the Commission would be required to evaluate all reasonable options, including satellites, wireless and terrestrially-based communications systems. The Commission would further be required to include in its evaluation a survey of Federal agencies; the feasibility of using private networks; the technical options, costs, and deployment methods of software and equipment for public safety entities; and the feasibility and cost of

necessary changes to network operations centers of terrestrial-based or satellite systems. The Commission would also be required to submit to Congress a report detailing its findings, including a full inventory of existing public and private resources most efficiently capable of providing emergency communications.

Subsection 151(d) would require the Secretary of Homeland Security to take into consideration the role of PSAPs and E–911 systems, and to reserve a portion of the grant funds for projects that enable interoperability and advance E–911 deployment.

Section 152. Transfer of Public Safety Grant Program to the Department of Homeland Security

Section 152 would amend section 3006 of the Deficit Reduction Act (DRA) to state that the interoperable communications grant program requirements in that section shall be administered by the Secretary of Homeland Security rather than the Assistant Secretary of Commerce. This section would also prohibit DHS from using grant funds for any purpose other than those provided in section 3006 of the DRA.

Section 153. Public safety interoperable communications grants

Section 153 would require the Secretary of Homeland Security to award the entire $1 billion authorized for grant funds no later than September 30, 2006.

Section 154. Eligibility of IP-enabled services

Section 154 would amend section 158(b)(1)(A) of the National Telecommunications and Information Administration (NTIA) Organization Act to authorize Phase II implementation grants under that Act to be used for services related to the migration to an E–911 capable emergency network that uses Internet Protocol and provides E–911 services.

TITLE II—UNIVERSAL SERVICE REFORM; INTERCONNECTION

General remarks on the importance of universal service

Through the years our nation's universal service program has ensured that rural Americans have access to basic and advanced communications services that are comparable in price and scope to those available to any other American. Accordingly, today all Americans enjoy the benefits that are afforded by the resulting product of this policy, a nationwide integrated communications network comprised of all forms of communications technologies.

The concept of universal service has been an integral part of America's communications policy for nearly 100 years. Initially established as more of a regulatory scheme, the policy was later enacted in statutory terms via the Communications Act of 1934. Congress more formally and extensively codified the policy in detailed terms within the Telecommunications Act of 1996. Recently, this Committee held a series of hearings on the subject of universal service and our nation's communications policies. The overriding conclusion of these forums was that our nation must not only maintain, but should move aggressively to strengthen and enhance our national policy of universal service to ensure it is able to help lead us through this communications era and on to the next without fal-

tering. The dramatic changes we have observed take place with regard to communications technologies in just the past decade mandates that we do no less.

Accordingly the Committee had devoted an entire title of the Communications Act of 2006 to effectuating this universal service endeavor. The language provides a broad definition of communications service that overcomes the dilemmas of viewing services from a particular technological or regulatory perspective, while at the same time giving the FCC the flexibility it needs to craft a rational contribution mechanism. And importantly the language includes a series of provisions designed to ensure universal service support is appropriately utilized and otherwise accounted for.

Section 201. Short title

SUBTITLE A—CONTRIBUTIONS TO UNIVERSAL SERVICE

Section 211. Stabilization of universal service funding

Subsection (a) would amend section 254(d) of the Communications Act to expand the base of support for the universal service program.

New section 254(d)(1)(A) would require communications service providers (providers of telecommunications service , broadband service and IP-enabled voice service) to contribute to universal service.

New section 254(d)(1)(B) would require the Commission to allocate contributions between such entities in a manner that is as competitively and technologically neutral as possible, and is specific, predictable and sufficient to preserve and sustain universal service. In addition, any methodology would not charge a particular service, transaction, or activity more than once for universal service contributions under this section. This language would not preclude a service, transaction or activity from being assessed for both a Federal and a State universal service program.

New section 254(d)(1)(C) would require the Commission to adjust requirements for low volume users in setting its contribution mechanism.

Proposed section 254(d)(2) would allow the Commission to exempt providers from universal service contributions if contributions would be *de minimis*; the communications service is provided pursuant to the Lifeline Assistance Program; the communications service is provided only to in-vehicle emergency communications customers; or the communications service is provided by a not-for-profit communications service provider, which provides voice mailboxes to low income consumers and the homeless. The Committee does not intend this section to reduce or otherwise limit the FCC's existing authority under section 254 to assist low-income and disadvantaged populations to receive communications services.

New section 254(d)(3)(A) would provide the Commission with flexibility to assess contributions on the basis of total revenue, in-use working phone numbers or any other identifier protocol or network connections, or network capacity.

New section 254(d)(3)(B) would provide that the Commission may use more than one methodology provided in new section 254(d)(3)(A) if no one methodology meets all of the goals of supporting universal service.

New section 254(d)(3)(C) would provide the Commission with authority in connection with contribution assessments over the interstate, intrastate, and international portions of communications service.

New section 254(d)(3)(D) would permit the Commission to provide a discount for residential group or family plans if it adopted a numbers based contribution mechanism.

New section 254(d)(4) would state that providers of communications service are not exempt from contributing to universal service solely because they do not receive funds from universal service.

New section 254(d)(5) would allow any entity that contributes to universal service to reflect the amount of the contribution on its billing statements, but would prohibit including administrative costs in such line item and would prohibit any separate delineation of any administrative costs.

New section 254(d)(6) would define "broadband service", "communications service", "in-vehicle emergency communications", "connection", "IP-enabled voice service", and "working phone numbers".

New section 254(f) would provide additional flexibility to States in administering State universal service programs. States would be permitted to assess the revenue, in-use working phone numbers or any other network connections, capacity, or any combination thereof. This section would permit States to impose universal service assessments on telecommunications service and IP-enabled voice services.

Subsection 211(a)(2) would make a conforming amendment to section 254(b)(4).

Subsection (b)(1) would hold the universal service funds outside of the budget of the United States, the Congressional budget, the Balanced Budget and Emergency Deficit Control Act of 1985 or any other law requiring budget sequesters.

Subsection (b)(2) would exempt the collections and disbursements of the universal service program from sections of title 31 of the United States Code.

Subsection (c) would require that universal service accounts be kept in accordance with generally accepted accounting principles for Federal agencies and in accordance with the U.S. Government Standard General Ledger. The subsection would limit the investment of unexpended universal service balances to Federal securities.

Subsection (d) would require the Commission to complete its rulemaking implementing new section 254(d) within 180 days.

Subsection (e) would require that any rule issued under subsection (d) be provided to Congress 90 days before its effective date.

The Committee notes that nothing in this section should be interpreted as precluding the Commission or States from taking a similar approach with respect to collecting telecommunications relay service funding.

Section 212. Modification of rural video service exemption

Subsection (a) would amend section 251(f)(1) so that certain rural carriers could offer video service without losing the exemption provided by section 251(f)(1), but would require such carriers to interconnect.

Subsection (b) would extend the interconnection requirements of section 251 to 2 percent carriers that would otherwise be exempt.

Section 213. Interconnection

New section 715(a) would give facilities-based IP-enabled voice service providers the same rights, duties, and obligations as telecommunications carriers under sections 251 and 252 of the Communications Act as well as obligations under section 276 of the Communications Act, if the provider elects to assert such rights. The Commission shall apply this standard in a manner that ensures that only bona fide providers of services who are legitimately deploying facilities are able to take advantage of the provision, but should not use it to create barriers of entry for new providers who are deploying facilities. The section would also provide that telecommunications carriers cannot refuse traffic solely because it is IP-enabled. Similarly, providers would not be able to avoid paying compensation for interstate traffic owed to other providers solely on the basis that the traffic is IP-enabled.

New section 715(b) would extend the rights, obligations and duties of sections 225, 255 and 710 to IP-enabled voice service providers and manufacturers of IP-enabled voice service equipment. As new Internet technologies change the way our nation communicates and receives information, people with disabilities will be presented with new opportunities to enhance their independence and productivity provided that safeguards are put into place to ensure that these individuals are able to access these technologies to the same extent as non-disabled Americans. This section would ensure that IP-enabled technologies incorporate features that permit disability access, while these technologies are still being developed, rather than later, when retrofitting them could become burdensome and expensive.

New section 715(c) would require IP-enabled voice service providers to provide notice to customers with an emergency response system that the IP-enabled voice service could impact the functioning of their system.

New section 715(e) would clarify that this section does not affect tax law.

New section 715(f) would define the terms "emergency response system", "emergency response center", "facilities-based", and "IP-enabled voice service".

Section 214. Treatment of substitute services under section 254(g)

New section 214 would extend the requirements of section 254(g) to services that are effective substitutes for interexchange telecommunications service.

SUBTITLE B—DISTRIBUTIONS FROM UNIVERSAL SERVICE

Section 251. Encouraging broadband deployment

New section 251(a) would require an eligible communications carrier to file biennial reports on broadband deployment to the Commission and State Commissions detailing for each of its service areas: (1) the percentage of households to which it offers broadband service, (2) the percentage of households that subscribe to broadband service, (3) the service plans and speeds at which

broadband service is offered, (4) the types of technologies used in offering broadband service, and (5) any planned upgrade or rollout of broadband service in the next 2 years.

New section 251(b) would provide for protection of sensitive business information.

New section 251(c) would require the Commission to include the data in its section 706 reports, but only in a manner that complies with new section 251(b).

Section 252. Establishment of broadband program within universal service fund

New section 254A(a) would establish a broadband for unserved areas program to provide financial assistance for the deployment of broadband equipment and infrastructure in unserved areas. The program shall focus primarily on the initial deployment, but may provide some ongoing financial assistance for the first few years to ensure that a provider has time to gain subscribers. In determining whether to provide any continuing assistance, smaller carriers with 2 percent or fewer of the Nation's broadband connections to end users should be given preference, while providers with more than 2 percent of the Nation's broadband connections to end users should be presumed to not need continuing assistance.

New section 254A(b)(1) would require the Commission to establish rules implementing the broadband for unserved areas program and provides the Commission with guidance as to what its rules should cover.

New section 254A(b)(2) would clarify that wired, wireless, and satellite broadband providers are eligible and that satellite broadband customer premise equipment would be supported.

New section 254A(b)(3) would provide that the availability of satellite broadband service in an area where subscribership to such service is *de minimis* does not preclude an area from eligibility.

New section 254A(b)(4) would state that multiple areas within a State may be designated as unserved.

New section 254A(c) would limit the size of the fund to $500 million per fiscal year, would specify that unused funds be applied to support section 254 generally, and would limit support to 1 facilities-based service provider per unserved area.

New section 254A(d) would specify that section 410 of the Communications Act would not apply to this subsection.

New section 254A(e) would define "broadband service" and require the Commission to review the transmission speeds in the definition biannually.

New section 254(A)(f) would require the Commission to make annual reports to Congress about the sufficiency of funds for this program.

Funding clarification

The Committee wishes to make it absolutely clear that while the funds authorized for this program are to be collected and distributed by the Universal Service Administrative Company (USAC) via the statutory and regulatory directives associated with section 254(d) of the Communications Act as amended, that just as is the case with all the other programs operated via that section of Federal law, each has its own funding authorizations and obligations

and the committee does not intend for funds collected for this program to result in any decrease in funding for any other universal service program.

Section 253. Competitive neutrality principle

Section 253 would amend section 254(b) of the Communications Act by adding a new paragraph that would state that universal service support mechanisms and rules should be competitively neutral. Such a provision would clarify that the Commission should not unfairly favor one technology or provider over another. For example, the Commission should not favor wireline providers over wireless providers.

Section 254. Transition rules for modifications adversely affecting carriers

This section would require the Commission to adopt transition mechanisms of not less than 5 years in duration to alleviate any harmful effect of changes to the support provided to existing eligible communications carriers.

Section 255. Eligibility guidelines

This section amends section 214 of the Communications Act to set forth eligibility guidelines for eligible communications carriers.

New section 214(e)(7)(A)(i) would require eligible communications carriers to commit to providing service throughout their designated service area to all customers.

New section 214(e)(7)(A)(ii) would require eligible communications carriers to certify the timely provisioning of service so long as it can be done at a reasonable cost.

New section 214(e)(7)(A)(iii) would require eligible communications carriers to submit a plan specifying proposed upgrades or network improvements that would be accomplished with universal service funding over the next two years.

New section 214(e)(7)(A)(iv) would require eligible communications carriers to demonstrate their ability to remain functional in emergencies.

New section 214(e)(7)(A)(v) would require eligible communications carriers to commit to meeting applicable consumer protection and service quality standards.

New section 214(e)(7)(vi) would require eligible communications carriers to comply with annual reporting requirements.

New section 214(e)(7)(B) would only apply the eligibility criteria on prospective basis.

New section 214(e)(7)(C) would require that any application for status as an eligible communications carrier be acted on within 6 months. The Committee expects that the Commission would acknowledge the differences in service areas tied to existing plant and geographic licenses between different providers.

New section 214(e)(7)(D) would define "eligible communications carrier".

Section 256. Primary line

New section 214(e)(8) would prohibit the Commission from limiting universal service support to a single connection or primary

line and ensure that all residential and business lines are eligible for support.

Section 257. Phantom traffic

New section 254(m)(1) would require any telecommunications service or IP-enabled voice service to identify its traffic with the identity of the originating provider, the class of service, the calling and called parties, and such other information as the Commission deems appropriate to the extent it is technically possible. It would also require such information not be stripped during transport by any provider unless permitted by the Commission. In the case of IP traffic, it is not the Committee's intent that every packet be required to include the identification information so long as the information is conveyed within the whole of the packets transmitted.

New section 254(m)(2) would require the Commission, in consultation with State Commissions, to initiate a rulemaking within 180 days to establish rules and enforcement provisions for traffic identification.

New section 254(m)(3) would require the Commission to establish and enforce clear penalties, fines and sanctions.

New section 254(m)(4) would define "voice communication service" for this subsection.

Subsection (b) would make conforming edits to include payphone calls within the definition in 47 U.S.C. 276(d).

Section 258. Random audits

New section 254(N) would require random audits of all recipients of universal service funds regarding the receipt and use of universal service funds. With respect to eligible communications carriers, such audits would also examine its relative costs to provide service compared to similar carriers. The Commission would also be required to take appropriate remedial action with respect to improper use of universal service funds. The audits would be funded out of universal service program funds.

Section 259. Integrity and accountability

Section 259(a) would require the Commission to—

(1) ensure the integrity and accountability of all universal service programs established under sections 254 and 254A; and

(2) within 180 days—

(A) identify appropriate fiscal controls and accountability standards for all universal service programs;

(B) define the administrative structure and processes of USAC;

(C) create performance goals and measures for the program;

(D) create performance goals and measures for the schools and libraries program; and

(E) establish appropriate enforcement actions for rule violations and actions taken in connection with the schools and libraries program.

Specifically, the bill directs the Commission and USAC to develop processes for measuring the progress of schools and libraries toward achieving advances in connectivity goals, such as speed and access. The Committee intends that such performance measures re-

flect the Universal Service support mechanism's longstanding mission to provide schools and libraries with access to an evolving level of advanced communications services and that the measures should acknowledge schools' and libraries' unique, individual advanced telecommunications requirements, which vary greatly by State, school or library. For example, the State of Maine's laptop program leverages E-rate supported connectivity in a different way than the internal connection and classroom computers model used in West Virginia. In another case, the Pribil School District in Alaska graduated two students educated solely through video conference provided through E-rate connectivity.

Data collection for the performance measure system should be minimally burdensome on applicants. Such collection could occur as a component of the existing application submission process. Reporting progress as part of the application process would enable USAC to measure progress over time and meet the GAO Report 05–151 recommendation to collect data on private schools and libraries, as well.

Subsection 259(b) would permanently ban any vendor that has been convicted of a criminal fraud from participating in the schools and libraries program.

Section 260. Improving effectiveness of rural healthcare support mechanism

This section would amend section 254(h) of the Communications Act.

Subsection (a)(1) would make formatting changes.

Subsection (a)(2) would add "deployment of reasonable infrastructure" as part of what carriers must provide upon request.

Subsection (a)(3)would clarify that carriers should be reimbursed promptly.

Subsection (a)(4) would provide that public or nonprofit healthcare providers in rural areas would be eligible for discounts and would amend the definition of "rural area".

Subsections (a)(5) and (6) would expand the list of health care providers.

Subsection (b) would clarify that nothing in this Act is meant to alter the amount of support or the means of distribution for the schools, libraries, rural health care, life-line, link-up and toll limitation programs.

Subsection (c) would require that the American Community Survey be expanded to collect Internet access information.

Section 261. Communications services for libraries

This section would amend section 254(h)(4) of the Communications Act to clarify that Native American libraries or library consortia are eligible to receive funds regardless of the entity that provides such library or library consortia with assistance under the Library Services and Technology Act.

Section 262. USF support for insular areas

This section would require the Federal Communications Commission within 180 days of enactment to issue an order establishing a predictable and sufficient support mechanism as part of the Federal Universal Service Fund for eligible carriers in insular areas.

The areas covered by these rules would expressly include any insular area that is a state comprised entirely of islands, and would include assistance for high-cost communications transport services used by carriers whose service territory includes multiple noncontiguous service areas.

TITLE III—STREAMLINING THE FRANCHISING PROCESS

In drafting the franchise title, the Committee attempted to address concerns expressed by the local governments. These changes include: (1) increasing the number of days for the franchise application process from 75 to 90 days, (2) providing the full amount of financial support for PEG channels that the franchising authorities are currently receiving (including lump sum payments from cable operators), (3) allowing local governments to impose a franchise fee on the fee that charged to subscribers, (4) striking the provision in the bill which required all appeals to be filed with the United States Court of Appeals for the District of Columbia Circuit, (5) including a tax savings clause to clarify that franchise reform would not limit local governments' authority to impose taxes, (6) and clarifying that the scope of the provision does not extend to video service providers, such as AT&T's Internet protocol video offering, nor does it apply to video packages offered by providers.

Section 301. Short title

This section would provide that title III of the Communications Act of 2006 may be cited as "Video Competition and Savings for Consumers Act of 2006".

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

Section 311. Application of title VI to video services and video service providers

This section replaces and updates certain terminology in title VI (47 U.S.C. 521 et seq.). For example, instead of using the term "cable operator", the new title VI would refer to such entity as a "video service provider".

Section 312. Franchise applications; Scope

This section adds a new section 603 to title VI that would require a franchising authority to grant a franchise application within 90 calendar days after receiving a completed franchise application. The terms of such agreement would take effect 15 days after a video service provider receives a completed franchise application from a franchising authority. If, however, a video service provider rejects the franchising authority's terms within that 15 day window, the terms of the application would not take effect. Also, a franchising authority would not be required to complete an application if the video service provider's franchise had been previously revoked. Section 603(c) would provide an appeals process for applicants who are denied a franchise and who have previously had a franchise revoked.

Upon applying for a franchise, a video service provider would be required to use a standardized application form that would be promulgated by the FCC. Upon receiving such franchise application

from a video service provider, a franchising authority would be required to do several things. First, it would be required to publish a public notice of the application within 15 days of receipt of the application - if required to do so by State or local law. Second, a franchising authority would be required to complete and return the application within 90 calendar days after receiving the application from the video service provider. It would be within the purview of the franchising authority to decide and fill out the following items on the application: (1) the franchise fee percentage, (2) the number of PEG channels, (3) any fee percentage that may be assessed to support PEG and institutional networks, and (4) the point of contact for the franchising authority. A franchising authority would be required to address such items in a manner that is consistent with the requirements of this title. For example, since this title would authorize a franchising authority to collect up to five percent of the video service provider's gross revenue as a franchise fee, a franchising authority could not select a franchise fee percentage above five percent.

If a franchising authority fails to return the franchise application within the 90 day period, the franchise application would be deemed granted on the 91st day with the following terms: (1) the term of the franchise would be fifteen years, (2) the percentage of gross revenue would be equal to the percentage of gross revenue paid by the cable operator that has the most subscribers in the franchise area (or five percent if there is no cable operator in the area), and (3) the number of PEG channels required subject to terms set forth in section 611.

Section 604. No effect on State laws of general applicability.

This section would clarify that this title would not affect State or local laws of general applicability unless such laws are inconsistent with this title.

Section 605. Direct broadcast satellite service.

This section would clarify that no State or local government could regulate direct broadcast satellite services. However, the section would also clarify that this section could not be interpreted to prevent a State from imposing taxes on a provider of direct-to-home satellite service and could not be interpreted to preempt State or local laws of general applicability.

Section 313. Standard franchise application form

This section would amend section 612 (47 U.S.C. 532). Section 612 would require the FCC to promulgate a standard franchise application form within 30 days of enactment. Section 612 would require that the form include a statement that includes specific compliance commitments to be signed by the video service provider. Section 612 would also set forth the specific provisions that would be required to be included in the form.

Section 314. Definitions

This section would amend section 602 (47 U.S.C. 522) to include definitions. The Committee notes that the new definitions of "video service" and "video service provider" are added. These new terms include all wireline multichannel video distributors that use the public rights-of-way, regardless of the technologies they employ, including Internet protocol transmission or switched video. The Com-

mittee also notes that all such distributors are also included under the current definitions of "cable operator," "cable service," and "cable system." Other than specifying the use of a "closed transmission path," these definitions are technology-neutral, and include providers that use Internet protocol transmission or switched video. The Committee does not view that any wireline multichannel video programming distributor would have the legal authority to consider itself outside of the existing franchise framework or the new framework which is set forth in this legislation by bundling video services with Internet access services or some other service. Additionally, the definition of "video service provider" excludes any person to the extent that person is providing satellite service, "including if such [satellite] service is bundled with, or offered in conjunction with, an Internet access service or other broadband capability." The Committee notes that this language is only intended to exclude the combination of a satellite video and broadband Internet access service delivered to the same subscriber location. It is not intended that this language exclude the provision of wireline multichannel video service by any person in any franchise area, even if that person is delivering video via satellite elsewhere in that franchise area or in any other location. It also does not exclude wireline multichannel video service that is bundled with any other satellite-delivered service.

Section 315. Family tier study

This section would commend cable operators, satellite providers and other multichannel video programming distributors for engaging in a voluntary effort to offer family program tiers. It would require all multichannel video programming distributors to submit annually reports to the FCC on the details of each family tier that is offered, including the subscribership level for every tier and package offered. The FCC would be required to keep such specific information confidential but would be required to aggregate the information and annually submit a report to Congress.

Section 316. Notice of inquiry on violent programming

This section would require, within 180 days of enactment, the FCC to finish its Notice of Inquiry and issue its findings regarding the matter of Violent Television Programming and Its Impact on Children, MB Docket No. 04–261.

SUBTITLE B—STREAMLINING THE PROVISION OF VIDEO SERVICES

Section 331. Franchise requirements and related provisions

This section would amend section 621 (47 U.S.C. 541) by striking section 621(a) and inserting new language that would prevent a franchising authority from granting an exclusive franchise or granting a franchise for a term shorter than 5 years or longer than 15 years. The section would also preserve a local authority's right to manage public rights-of-way and easements. It also would protect property owners by continuing to allow State or local governments to require that property owners be justly compensated by the video service provider for any damage incurred by the video service provider in the installation, construction, operation or removal of facilities. It would require that the video service provider

ensure the safety of its facilities and ensure that the cost of installation, construction, or removal of such facilities be borne by the video service provider, subscriber or both.

This section would also amend section 622 (47 U.S.C. 452) by inserting new language in subsections (a) and (b). It would allow a franchising authority to impose and collect a franchise fee but would not allow a franchising authority to discriminate among video service providers in assessing such fees. The franchise fee assessed for any 12 month period could not exceed 5 percent of the video service provider's gross revenue for that period. It would allow fees to be paid on a prepaid or deferred basis and would set forth the parameters for doing so. And, it would allow for a State or local government to enter into a voluntary agreement with a video service provider to reduce the franchise fee in exchange for the video service provider making available to the government any such alternative valuable consideration such as equipment. It would set forth that a franchising authority could require a video service provider to pay a fee not more than 1 percent of its gross revenue for support of PEG access facilities and institutional networks or a proportional amount of such grants and services for PEG calculated on a per subscriber basis. In order to calculate the per subscriber amount, a video service provider would be required to provide the franchising authority with sufficient information which would be treated as confidential and proprietary. This section would, however, provide a special rule for Hawaii in that the per subscriber calculation would not only apply to PEG access facilities but would also apply to institutional networks.

In regard to existing institutional networks, a franchising authority would be permitted to require a cable operator or video service provider to continue providing its institutional network even if the underlying franchise subsequently expires. It would not require a video service provider to construct a new institutional network. However, it would include a special rule for Hawaii in that such requirement would not only apply to situations where institutional networks were currently required under a franchise but also in situations where a cable operator had committed to provide an institutional network or additional institutional network services.

This section also makes clear that nothing in this section is intended to impact State or local taxation laws.

The section also would allow a franchising authority to conduct an audit no more than once a year which would consist of a review of the video service provider's business records to ensure that the franchising authority is receiving the proper amount of fees. Procedures would be established by the FCC for these audits and a franchising authority would be required to keep such information confidential. A video service provider would be required to reimburse a franchising authority for the cost of the audit if a franchising authority identifies an underpayment of over 5 percent of any fee. A statute of limitation would be imposed such that a franchising authority would not be able to review any fee that was remitted or paid more than 3 years prior.

Generally accepted accounting principles (GAAP) would be applicable to this section.

This section would also provide the definition of "franchise fee" and the definition of "gross revenue".

Section 332. Renewal; Revocation

This section would strike existing sections 625 and 626 and insert a new section 625 that would allow a video service provider to submit a written renewal application not more than 180 days before the franchise is set to expire. The standard application form would be the form that a video service provider would be required to use. Section 625 would also include a revocation section that would allow a franchising authority to revoke a franchise if it determines, after providing the video service provider with an opportunity for a hearing, that such provider: (1) violated any Federal or State law or FCC regulation, relating to the provision of video services in the franchise area, (2) made false statements, or material omissions, in anything that it filed with the franchising authority or the FCC relating to the provision of video services in the franchise area, (3) violated the rights-of-way management laws of the franchise area, or (4) violated the terms of the franchise agreement including any commercial agreement authorized under section 622(b)(3). Prior to revoking any franchise, a franchising authority would be required to first provide written notice to a video service provider of the alleged violation and a reasonable opportunity to cure such violation. Any decision made by a franchising authority regarding revocation would be considered final for purposes of appeal.

Section 333. PEG and institutional network obligations

This section would strike existing section 611 (47 U.S.C. 531) and inserts a new section that would require a video service provider that obtains a franchise to provide at least the same channel capacity for PEG use that the cable operator or video service provider with the greatest number of PEG channels provides in the franchise area on the date that the video service provider's franchise goes into effect. If no cable operator or video service provider exists in the area at that time, then the video service provider could be required by the franchising authority to provide up to 3 PEG channels. The section would also provide an adjustment opportunity such that every 15 years after a franchise is granted, a franchising authority could require a video service provider to increase the channel capacity by no more than the greater of 1 additional channel or 10 percent of the PEG channel capacity required of the video service provider. Subject to section 624(d)(1), this section would make clear that a video service provider could not exercise any editorial control over any PEG channels except that it could refuse to transmit any PEG or portion of a public access program that contains obscenity. The section would also set forth the video service provider's requirements including to whom it would have to provide PEG programming to, its PEG transmission responsibilities, its PEG interconnection and cost-sharing responsibilities, and its display of the program information for the PEG channels. It would also set forth that a franchising authority would be the entity responsible for the production of any such programming.

Section 334. Services, facilities and equipment

This section would amend section 624 (47 U.S.C. 544) by eliminating certain provisions regarding a franchising authority's authority to establish requirements regarding services, facilities, and equipment.

Section 335. Shared facilities

This section would strike existing section 627, redesignate existing sections 628 and 629 as new sections 626 and 627 and add a new section 628 regarding shared facilities that would prohibit a video service programming provider that has an attributable interest in a video service programming vendor from refusing to provide access to video programming only because that video service provider uses a headend for a video service system that is also used under a shared ownership or leasing agreement for another video service system. This section would be of particular use to rural telephone companies.

Section 336. Consumer protection and customer service

This section would replace existing section 632 (47 U.S.C. 552) and require the FCC to promulgate regulations within 120 days after the date of enactment regarding customer service and consumer protection requirements for video service providers. As part of its rulemaking, the FCC would be required to consider comments from interested parties, which would include national associations representing franchising authorities and consumers. The regulations would include penalties to be paid to subscribers. The regulations would take effect 60 days after a final rule is promulgated. Such regulations would be enforced by a franchising authority but a franchising authority could refer an enforcement matter to a State attorney general or a State consumer protection agency. A video service provider would be permitted to appeal any enforcement action to the FCC. Subsection (b) would prohibit an early termination fee in excess of 1 month's subscription fee.

Section 337. Redlining

This section would provide redlining rules to be applied to all video service providers. It would make it unlawful for a video service provider to deny access to its video service to a group due to the group's income, race, or religion. The redlining complaints would be submitted by a resident of the franchising area or submitted by a franchising authority on behalf of residents in its area, but the decision to file such a complaint in a court of competent jurisdiction shall be subject to the discretion of the State's attorney general. The State attorney general would be required to render a decision on whether to file a complaint within 180 days of receiving such complaint, either by filing such complaint with a court of competent jurisdiction or notifying the resident or franchising authority that it will not file a complaint with the court. Any adjudication of such complaint would be based on the totality of the video service provider's deployments in its service areas. If a court determines that a redlining violation occurred, it shall ensure that the video service provider remedies the violation, and it may assess a civil penalty as may be authorized by the State law for a violation of the State's antidiscrimination laws. This section would provide

that a video service provider cannot be found in violation of this redlining section if service is denied due to technical feasibility, commercial feasibility, operational limitations, or physical barriers precluding the effective provision of video service. Additionally, the section would clarify that this section would not authorize the use of quotas, goals, or timetables as a remedy. The section would also require each franchising authority to report to the Commission on a video service provider's deployment in its franchise area starting 3 years after the date of enactment. In turn, the FCC would be required to develop a standardized, electronic data-based, report form to be used for this requirement. The video service providers would be required to provide a franchising authority with the appropriate information so that the report can be completed. Starting within 4 years after enactment, and every 4 years thereafter, the FCC would be required to report such information regarding buildout to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce.

Section 338. Application of section 503(b)

This section would make video service providers subject to the same penalties outlined in section 503(b) to which cable television operators or cable television system operators are subject.

Section 339. Application of title VII cable provisions to video services

This section would amend title VII (47 U.S.C. 601) to include the new terms used in this Act.

Section 340. Children's Television Act

This section would amend the Children's Television Act, 47 U.S.C. 303a(d), to include video service providers.

Section 351. Miscellaneous and conforming amendments

This section would clarify that no provision of this title should be construed to prohibit a local or municipal authority that is affiliated with a franchising authority from operating as a multichannel video programming distributor in that area. This section would also update certain dates within title VI, repeal existing section 617, and strike sections 636 and 637.

This section would also amend title VI (47 U.S.C. 521 et seq.) by adding a new section 642 that would govern the offering or provision of IP-enabled video services by non-video service providers. This section clarifies and preserves the regulatory-free environment that has resulted in the recent explosion of innovative video programming to consumers. Under this new section, the offering or provision of an IP-enabled video service is exclusively an interstate service subject only to Federal regulations. The only authority preserved for a State, local or tribal government is in new subsection (d), which provides a narrow exception to the broad preemption for a lawful activity of a law enforcement agency. This limited exception is intended to preserve policing over obscene materials, including child pornography. New subsection (b) makes it clear that the scope of the provision does not extend to video service providers, such as AT&T's video service offering that uses Internet protocol

offering, nor does it apply to video packages offered by these providers. New subsection (c) prohibits the FCC from enacting any rules, regulations, or otherwise regulating the offering or provision of an IP-enabled video service. Subsection (e) would clarify that there is no effect on tax laws and subsection (g) makes conforming edits.

Section 381. Effective dates; Phase-in

This section would cause the Act to become effective 180 days after the date of enactment, except that the FCC would be expected to initiate any rulemaking imposed under this Act as soon as practicable after enactment. Any existing franchise agreements would remain in effect for a cable operator until the earlier of either the expiration of the current franchise agreement or the date when a new franchise agreement replacing the existing agreement goes into effect pursuant to new section 381(b)(2). When a franchising authority grants a franchise to a video service provider, the video service provider would be required to notify the franchising authority when the video service commences in that area and the franchising authority would be required to notify immediately any cable operator in that franchise area that it is in receipt of such notice. Upon receipt of the notice, a cable operator would be permitted to submit an application for a new franchise under the new streamlined provisions authorized by this Act. When the cable operator's application is granted, the new terms and conditions would supersede the cable operator's existing agreement. Basic rate regulation would still apply in any franchise area until a franchising authority receives notice that a video service provider has begun to provide video service in the franchise area.

TITLE IV—VIDEO CONTENT

SUBTITLE A—NATIONAL SATELLITE

Section 401. Availability of certain licensed services in noncontiguous States

Subsection 401(a) would amend section 335 of the Communications Act by adding a new subsection 335(c).

New subsection 335(c)(1) would require each satellite carrier to provide consumer products in Alaska and Hawaii that are comparable to those offered to subscribers in the contiguous United States, to the extent technically feasible, given the carrier's satellite constellation then in use.

New subsection 335(c)(2) would require the FCC to require that, to the extent technically feasible, certain minimum conditions be met before granting a license for a new satellite used for service in the contiguous United States.

New subparagraph 335(c)(2)(A)(i) would require that in the case of direct-to-home video services, the satellite for which a new license is to be granted shall be capable of providing services to consumers in the Alaskan cities of Anchorage, Fairbanks and Juneau using signal power levels of at least 45 dBW effective isotropic radiated power and to consumers in the Hawaiian islands of Oahu, Maui, Kauai, Molokai and Hawaii using signal power levels of at least 46 dBW effective isotropic radiated power.

New subparagraph 335(c)(2)(A)(ii)(I) would require that in the case of direct-to-consumer satellite services, other than direct-to-home video services, to be offered on a satellite for which a new license is to be granted, the carrier shall make best efforts to ensure that such services offered on beams covering substantially the entire contiguous United States, are offered in a manner that allows access by consumers in Alaska and Hawaii that use a commercially available antenna. Specifically, it would require that the carrier make best efforts to ensure that the isotropic radiated downlink power and, where applicable, the efficiency of the satellite receive antenna (G/T) allows such use of commercially available equipment in Alaska and Hawaii.

New subparagraph 335(c)(2)(A)(ii)(II) would require that in the case of direct-to-consumer satellite services, other than direct-to-home video services, to be offered on a satellite for which a new license is to be granted, the carrier shall make best efforts to ensure that such services offered on spot beams covering portions of the contiguous United States, are offered in a manner that allows access by consumers in Alaska and Hawaii that use the same antenna as used in the contiguous United States. Specifically, it would require that the carrier make best efforts to ensure that the isotropic radiated downlink power and, where applicable, the efficiency of the satellite receive antenna (G/T) allows such use of the same antenna in Alaska and Hawaii.

New subparagraph 335(c)(2)(B) would exempt a carrier from the requirements of new subparagraph 335(c)(2)(A) in areas where a satellite would have a look angle of less than 8.25 degrees.

New subparagraph 335(c)(3) defines "satellite carrier" as used in subsection 335(c) to mean any entity that uses the facilities of a satellite in the Fixed Satellite Service, the Direct Satellite Broadcast Service, the Mobile Satellite Service, or the Digital Audio Radio Service licensed by the FCC under Part 25 of its rules, or that is licensed or authorized by a foreign government.

Subsection 401(b) would provide that new subsection 335(c) would take effect 36 months after enactment of the bill.

Subsection 401(c) would clarify that section 401 shall not be construed as requiring any satellite carrier to take any action the FCC determines will materially impact the signal quality or availability of programming available to such carrier's subscribers in the continental United States.

Subsection 401(d)(1) would require the FCC to adopt rules and policies as necessary to implement and enforce new subsection 335(c).

Subsection 401(d)(2) would require that within 30 days after enactment of the bill that the FCC amend its rules, promulgated under section 207 of the 1996 Act, which prohibited restrictions on the installation or use of direct-to-home video service satellite dishes, to cover Hawaii. The FCC's rule which applies to dishes 1 meter or less in diameter or that were in Alaska would be extended to cover dishes in Hawaii as well.

In general, subtitle A is designed to assist consumers in Alaska and Hawaii, who have historically had less access to direct broadcast satellite (DBS) and direct-to-home (DTH) satellite services that provide multichannel video, audio, and broadband Internet services than consumers in the continental United States. In particular, the

Committee notes that an increasing number of satellite companies are providing multichannel video, audio, and broadband Internet services directly to consumers using various types of DTH satellite networks. While these services are being offered to consumers in the continental United States, comparable DTH satellite services are still not widely available to consumers in Alaska and Hawaii. Therefore, to promote universal access to such services, a statutory requirement that recognizes the technological limitations of satellite carriers while advancing the provision of comparable DBS and DTH video, audio, and broadband Internet services in non-contiguous States is appropriate.

Subtitle A includes language that is intended to place conditions on FCC authorizations to launch and operate new satellites, even if such satellites replace existing satellites. It is not, however, intended to place conditions on FCC authorizations to modify satellite licenses. Thus, the Committee does not intend this language to apply where, for example, a satellite carrier seeks to relocate a satellite from one orbital location to another.

SUBTITLE B—VIDEO AND AUDIO FLAG

Section 451. Short title

Section 451 would provide the short title for Subtitle B of the bill, "Digital Content Protection Act of 2006."

Section 452. Protection of digital broadcast video content

Subsection 452(a) would amend section 303 of the Communications Act by adding at the end a new subsection 303(z) authorizing the FCC to adopt regulations and certifications as necessary to implement the FCC's report and order on digital broadcast content protection, FCC 03-273, that was overturned by the D.C. Circuit. The new subsection would limit the FCC's authority to preventing the indiscriminate redistribution of digital television content over the Internet or similar distribution platforms and would also authorize the FCC to modify any such regulations and certifications for such purpose.

Subsection 452(b) would ratify the FCC's broadcast video flag report and order, FCC 03-273, and its Digital Output Protection Technology and Recording Method Certifications order, FCC 04-193, subject to the limitations in subsection 452(d) of the bill. Such ratification would become effective 12 months after enactment of the bill.

Subsection 452(c) would require the FCC, within 30 days after enactment of the bill, to initiate a proceeding for the approval of broadcast flag protection technologies and recording methods for use in the course of distance learning. Such proceeding would be conducted in accordance with the expedited procedures established for the Commission's Interim Approval of Authorized Digital Output Protection Technologies and Authorized Recording Methods in the Report and Order. This subsection clarifies that such proceeding would have no effect on certifications made pursuant to the order FCC 04-193, as ratified by subsection 452(b).

Subsection 452(d)(1) would clarify that nothing in the bill or section 303(z) as amended shall limit the FCC's authority to approve digital output protection technologies and recording methods that

allow the redistribution of digital broadcast content within the home or similar environment, or the use of the Internet to transmit such content, where such technologies and recording methods adequately protect such content from indiscriminate redistribution. This subsection would also clarify that nothing in the bill or section 303(z) shall be construed to affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under title 17 of the United States Code.

Subsection 452(d)(2) would prohibit television broadcast station licensees from using the Redistribution Control Descriptor adopted by the FCC's broadcast flag report and order, FCC 03-273, to limit the redistribution of news and public affairs programming the primary commercial value of which depends on timeliness. This subsection would require the FCC to allow each broadcaster or broadcasting network to determine whether the primary commercial value of a particular news program depends on timeliness and would authorize the FCC to review such broadcaster determinations upon receipt of bona fide complaints alleging, or if it otherwise has reason to believe, that particular broadcast digital television content has violated subsection 452(d)(2)'s limitation concerning timeliness and commercial value.

Subsection 452(d)(3) would require the FCC to require that any authorized redistribution control technology and recording method publicly available under section 452 of the bill be licensed on reasonable and nondiscriminatory terms and conditions, including terms preserving a licensee's ability to assert any patent rights necessary for implementation of the licensed technology.

Section 453. Protection of digital audio broadcasting content

Subsection 453 would amend title III of the Communications Act by adding at the end of Part I a new section 342 concerning the protection of digital audio broadcasting content.

New subsection 342(a) would authorize the Commission to promulgate regulations governing the distribution of audio content with respect to digital radio broadcasts, satellite digital radio transmissions, and digital radios.

New subsection 342(b) would require that the Commission ensure that a performing rights society or mechanical rights organization be granted a license for free or for a *de minimis* fee, subject to certain conditions.

Section 454. Digital Audio Review Board

Subsection 454(a) would require the FCC to establish an advisory committee known as the Digital Audio Review Board.

Subsection 454(b) would require members of the Digital Audio Review Board to be appointed by the Chairman of the FCC and to include representatives nominated by various industry, public interest and artist organizations, or any other group the FCC determines will be directly affected by the adoption of broadcast flag technology regulations.

Subsection 454(c)(1) would require the Board to submit to the FCC, within 1 year after enactment of the bill, proposed regulations that represent a consensus of Board members and is consistent with fair use principles.

Subsection 454(c)(2) would allow the FCC to extend, for good cause shown, the 1-year period for the Board to propose audio broadcast flag regulations by not more than 6 months if the FCC determines that the Board has made substantial progress towards developing a proposed regulation, Board members are continuing to negotiate in good faith, and there is a reasonable expectation that the Board will draft and submit a proposed regulation before the expiration of the extension period.

Subsection 454(d)(1) would require the FCC to initiate, within 30 days after receiving a proposed regulation from the Board, a rulemaking proceeding to implement such regulation.

Subsection 454(d)(2) would require the FCC in the proceeding required under subsection 454(d)(1) to give substantial deference to the Board's proposed regulation and to issue a final rule not later than 6 months after the date on which the proceeding was initiated.

Subsection 454(d)(3) would authorize the FCC to initiate a rulemaking proceeding, if the Board failed to submit a proposed regulation, in order to determine what, if any, regulations are necessary and, if such regulations are necessary, to promulgate such implementing regulations as do not harm or delay the continued roll-out of High-Definition Radio.

Subsection 454(e) would set forth certain administrative provisions concerning the Digital Audio Review Board.

Subsection 454(e)(1) would require the Board to meet at the request of the Chairman of the FCC.

Subsection 454(e)(2) would authorize the Chairman of the FCC to appoint and terminate an Executive Director and such additional personnel as may be necessary to enable the Board to perform its duties.

Subsection 454(e)(3) would authorize the Board to procure temporary and intermittent services of consultants and experts.

Subsection 454(e)(4) would authorize the head of any Federal agency to, upon request of the Board, detail any Federal Government employee to the Board without reimbursement, and would clarify that such detail shall be without interruption or loss of civil service status or privilege.

Subsection 454(e)(5) would clarify that notwithstanding section 7(c) of the Federal Advisory Committee Act, the FCC shall provide the Board with such administrative and support services as are necessary to ensure it can carry out its functions.

Subsection 454(e)(6) would require the Board to terminate on the date on which it submits a proposed regulation to the Commission or at the discretion of the FCC Chairman, but no later than 18 months after its first meeting.

TITLE V—MUNICIPAL BROADBAND

Section 501. Short title

This section would establish the short title as the "Community Broadband Act".

Section 502. State regulation of municipal broadband networks

This section would amend section 706 of the Telecommunications Act of 1996 to establish the framework under which local governments may offer broadband capability or services to the public.

Subsection (c) would prohibit States from adopting or enforcing any statute, regulation, or other legal requirement that would prohibit or have the effect of prohibiting any municipality or public provider from offering advanced telecommunications capability or any service that utilizes that capability to itself or to the public.

Subsection (d)(1) would mandate that, to the extent a municipality or public provider regulates competing providers, it must apply its ordinances, rules, policies, and fees in a competitively neutral and nondiscriminatory manner. Such examples of ordinances, rules, fees or policies include those related to managing the public rights-of-way, permitting fees, performance bonding, and reporting.

Subsection (d)(2) would ensure that nothing in this section exempts a municipality or a public provider from any Federal or State telecommunications law or regulation that applies to all providers of advanced telecommunications capability or any service that utilizes that capability, including all applicable provisions of the Communications Act of 1934, as amended, the Telecommunications Act of 1996, and the Communications Assistance for Law Enforcement Act (CALEA).

Subsection (e) encourages municipalities or public providers to partner with a private provider of advanced telecommunications capability and services before erecting a municipally-owned or public system. Municipalities or public providers that decide not to partner with a private entity are subject to section 706(f).

Subsection (f)(1) would call for a municipality or public provider to supply notice to the public of its intent to offer advanced telecommunications capability or services and afford private or commercial providers an opportunity to bid on the offering of such capability or services. A municipality shall use their existing notice procedures to announce to local citizens, private providers and commercial vendors that it intends to provide advanced telecommunications capability and services. Nothing in this section, however, requires a public provider to accept a proposal from the private sector.

Subsection (f)(2) would require that the notice offered under subsection (f)(1) include services and capabilities to be provided, the coverage area, planned service tiers and pricing, and any particular geographically or demographically defined services.

Subsection (f)(3) would require any bids received from private providers be available for review by the public along with information about the total cost to taxpayers of such a proposal and to detail any potential alternatives. This subsection would also require the solicitation of public comments in response to the proposals to be filed within 30 days.

Subsection (f)(4) would allow a municipality or public provider, after reviewing bids from private or commercial providers, to proceed with a public or municipally owned project. The project should be approved by the municipality using the standard process routinely employed to approve municipal projects of comparable costs.

Subsection (f)(5) would exempt a municipality or public provider that is providing or upgrading advanced telecommunications capability or services as of April 20, 2006, or any municipality or public provider that has put forth a proposal that as of such date is in the request-for-proposals (RFP) process, is being built, or has been approved by referendum but is the subject of a lawsuit brought before March 1, 2006. The exemption also applies to a municipality that issued a Request for Interest to develop a state of the art fiber-to-the-premises broadband network on May 22, 2006.

Subsection (g) would prohibit Federal funds from being spent to reimburse or refund a municipality or public provider in the event a public provider offering advanced telecommunications capability or service falls into financial trouble or bankruptcy subject to limited exceptions.

Subsection (h) would ensure that public providers can offer and provide advanced communications capability and services during a state of emergency. With respect to advanced telecommunications capability and services provided to the public, the provisions of the title would resume effectiveness when the emergency situation has been resolved. To the extent public providers use advanced telecommunications capability or services solely to meet their own internal needs (such as for traffic systems, utility monitoring, or police surveillance), none of the provisions in this title apply. In addition, section (h) would define "public provider".

TITLE VI—WIRELESS INNOVATION NETWORKS

Section 601. Short title

This section would establish the "Wireless Innovation Act of 2006" or the "WIN Act of 2006" as the short title.

Section 602. Eligible broadcast television spectrum made available for wireless use

Section 602 would create a new section 343.

New section 343(a) would, 270 after the date of enactment of the bill, authorize certified unlicensed devices to operate in eligible broadcast television frequencies in a manner that protects licensees from harmful interference. The Committee notes that the Commission's standard for harmful interference is higher than a showing of any technical interference.

New section 343(b) directs the Commission to establish technical and device rules to protect licensees from harmful interference. Since broadcasters are required to carry certain emergency alerts over their authorized television channels, the requirement in the WIN Act to protect television service from harmful interference applies to protection of emergency alert services carried over broadcast TV. The Committee notes that a pilot project is being planned to deploy prototypes in Alaska to provide a real world demonstration of some of the services that might be possible. The Committee would expect the Commission to take note of such demonstration. It is the Committee's expectation that harmful interference will not result from such a trial.

The Committee further notes that the Commission has stated it will carefully consider the feasibility of any technical plan for avoiding harmful interference from unlicensed devices to existing

authorized service to ensure that those services will be adequately protected. To protect authorized broadcast television service, the Committee urges the Commission to consider a variety of means to prevent harmful interference which may require different technical and operational solutions for different types of certified unlicensed devices.

The Committee notes that it has been made aware that the Commission has the following measures available to it, though the Committee has no position on whether such measures would be needed.

- unlicensed devices would operate only on vacant channels and that they comply with appropriate safeguards, such as limits on power and operating frequency.
- protection requirements would be determined in conjunction with the use of Commission's software and engineering databases;
- installation of fixed/access devices would be performed by a certified professional;
- unlicensed operations would be required to comply with protection ratios for the particular classes of broadcast stations consistent with the relevant authorized signal contours;
- an unlicensed device would be required to identify through GPS or other means its geographic location within a specified measure of accuracy, to access a database to determine the location of other transmitters in its vicinity and to select the appropriate operating frequency, or alternatively, to use sensing receivers to detect the presence of other signals and select the appropriate frequency;
- unlicensed devices would be required to emit periodically a unique identifying control signal so that its presence may be immediately locatable in the event of harmful interference to authorized TV service.
- personal/portable devices would additionally be required to comply with a 100 mW power limit and have a permanently attached antenna with a maximum permissible gain limit of 6dBi and to emit a unique identifying signal periodically throughout the day

New section 343(b)(2) sets forth rules and procedures that the Commission must follow in establishing a certification process. The bill would require Commission certification of unlicensed devices, which may include testing in a laboratory certified by the Commission.

The bill also would require the Commission, if it determines such devices may cause harmful interference, to require manufacturers of unlicensed devices operating in vacant TV channels to provide the capability to disable the devices remotely or to modify their transmission characteristics remotely. The industry has already experimented with remote identification of devices, which would enable remote disabling or modification. Since the Commission proposal requires these devices to be self-identifying, approaches for harmful interference mitigation include, among other methods, communication with the devices via a base station, the Internet, or a beacon. It is the Committee's intent that the Commission have flexibility as to whether to require remote disabling technology. It is also the Committee's expectation that some devices deployed in

the band would be less likely to cause interference and would not need such remote capabilities.

The Commission would be required to immediately address any complaints from licensees, including through verification in the field, of the presence of harmful interference. The bill would also require that public safety entities authorized to operate as a primary licensee in the eligible broadcast television frequencies be protected from harmful interference.

New section 343(c) would define "certified unlicensed device", "eligible broadcast television frequencies", and "licensee".

The Committee seeks to encourage innovative and affordable broadband services for all Americans, and particularly rural Americans for whom wireless Internet access is very likely to be the most cost-effective broadband service deployed in their market. In addition, the Committee seeks to ensure that other new and inventive uses can become a reality such as the use of technologically advanced wireless networks and the wireless office or home, where voice, video, music, data and other applications are distributed from a single connection. The Committee also seeks to promote more efficient use of the radio spectrum for the benefit of the American public.

The Committee believes that the digital television transition or standards activities do not adversely affect the Commission's ability to act on this issue or to put in place rules to protect broadcast television operations. As the Commission stated in paragraph 2 of its May 2004 NPRM on TV white spaces, "We recognize that broadcasters are currently undergoing a transition to digital operation, during which channel availability is likely to change more frequently. Our approach would appropriately account for these changes." In paragraph 15 of the NPRM, the Commission further states: "We believe that with appropriate safeguards it would be possible to allow unlicensed operation in the TV bands without causing harmful interference to television services, disrupting the DTV transition, or adversely affecting the other services that use this spectrum." Nonetheless, the Committee notes that it expects the FCC to rigorously enforce the requirement that an unlicensed device not cause harmful interference to TV signals.

TITLE VII—DIGITAL TELEVISION

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

Section 701 of the bill would amend section 330 of the Communications Act by redesignating current sections in order to insert a new subsection 330(d) concerning consumer education requirements regarding analog television receivers and the transition to digital television that will occur on February 17, 2009.

New subsection 330(d)(1) would require any analog only television set manufactured in the United States or shipped in interstate commerce for the purpose of retail sale to carry a removable label on its screen that displays a consumer alert, as well as a label on the outside of retail packaging for such a set that is clear, conspicuous and cannot be removed.

New subsection 330(d)(2) would require, within 120 days after enactment of the bill, that any retailer that sells analog only television sets via direct mail, catalog or electronic means include in all advertisements or descriptions of such television set the product and digital television transition information set forth in new subsection 330(d)(3).

New paragraph 330(d)(3)(A) would provide the specific language to be included on consumer alert labels that new subsection 330(d) would require to be attached to television set screens, retail packaging or included in all advertisements or descriptions for analog only sets sold via direct mail, catalog or electronic means.

New paragraph 330(d)(3)(B) would require that all television sets with a picture screen 13 inches in diameter (measured diagonally) or greater shall be equipped with blocking technology like the V-chip to enable viewers to block display of all programs with a common rating.

New subsection 330(d)(4) would require the FCC to engage in a public outreach program within 1 month after enactment of the bill to educate consumers about the digital television transition. This subsection would also direct the FCC to maintain and publicize a consumer information website and telephone hotline.

New subsection 330(d)(5) would require each commercial television broadcast licensee or permittee to broadcast daily, from December 1, 2007, through March 1, 2008, and again from November 17, 2008, through February 17, 2009, two 30-second public service announcements (PSAs) at such times as the Commission may require in order to assure the widest possible audience. Such PSAs would be required to be provided in English and Spanish and other languages as appropriate, to notify the public of the digital television transition and converter box program, and to contain the address of the FCC consumer information website and toll free number required by subsection 330(d)(4). The Committee intends that at least one Public Service Announcement must be during primetime and must be aired during the daytime hours.

New subsection 330(d)(6) would require the FCC, in addition to any other civil or criminal penalty required by law, to issue civil forfeitures for violations of the requirements of new subsection 330(d) in an amount equal to not more than three times the amount of penalties under section 503(a)(2)(A) of the Communications Act.

New subsection 330(d)(7) would sunset after December 1, 2009 the requirements of new subsection 330(d), as they apply to manufacturers and retailers, excluding the consumer labeling provisions contained therein.

Subsection 701(b) would require the FCC to establish an advisory committee to help consumers with the digital television transition and would impose certain requirements and guidelines for such advisory committee.

Subsection 701(b)(1) would require within 60 days of enactment that the FCC establish an advisory committee, to be known as the DTV Working Group, to consult with State and local governments and the NTIA to promote consumer outreach and provide logistical assistance to consumers with special needs, including assistance relating to the converter box subsidy program. The working group would be required to ensure that the converter box subsidy pro-

gram includes a means to reach and assist elderly, disabled, low-income, and non-English speaking households with delivery and installation of converter boxes.

Subsection 701(b)(2) would require the FCC to appoint to the DTV Working Group representatives of groups involved with or affected by the transition to digital television and clarifies that Group members shall serve without compensation and shall not be considered Federal employees by reason of their service on the advisory committee.

Subsection 701(b)(3) would establish that the purpose of the DTV Working Group is to advise the FCC in creating and implementing a national plan to inform consumers about the digital television transition; to ensure that the FCC's national plan at a minimum includes recommended procedures for broadcaster PSAs, toll-free information hotlines, and retail displays or notices; and to ensure the FCC's national plan includes a requirement that all broadcasters in a designated market area submit a joint plan to the FCC addressing the public outreach and PSA requirements required by title VII of the bill. In addition, subparagraph 701(b)(3)(C) would require that the television broadcaster joint plan required for each designated market area (i) include a description of how each television broadcaster will fulfill the PSA requirements under new subsection 330(d)(7), include (ii) market research by each commercial television broadcaster regarding projected consumer demand for converter boxes in their designated market area, and (iii) be shared with retailers inside their designated market areas so that such retailers may stock the appropriate amount of converter boxes to meet consumer needs.

Subparagraph 701(b)(3)(C) would require the working group to work with the FCC and NITA to ensure that the converter box subsidy program adequately serves those consumers with the greatest need, including analog-only consumers.

Subparagraphs 701(b)(3)(D) and (E) would require the DTV Working Group to provide the FCC with 2 DTV Progress Reports that reflect private sector efforts to inform consumers about the digital transition and to minimize potential consumer disruption.

Subparagraph 701(b)(3)(F) would require that the DTV Working Group recommend to the FCC procedures for contacting persons with disabilities, which procedures shall include use of telecommunications relay services for persons with hearing or speech disabilities, distribution of printed materials in braille, or other alternative formats for those with vision or learning disabilities. This subparagraph would require the FCC procedures to include other alternative formats, including websites accessible to those with disabilities.

Subsection 701(c)(1) would amend Part I of title III of the Communications Act by inserting a new section 303A that would make it unlawful for a manufacturer or importer to import into the United States or ship in interstate commerce for sale or resale to the public, a television broadcast receiver (as defined in section 15.3(w) of the FCC's rules) that is not equipped with a tuner capable of receiving and decoding digital signals.

Subsection 701(c)(2) would forbid the FCC from revising the digital television reception capability implementation schedule under section 15.117(i) of its regulations, except to conform that section

to the requirements of new section 303A of the Communications Act.

Subsection 701(c)(3) would require, within 1 year after the date of enactment, that the Assistant Secretary of Commerce for Communications and Information, in consultation with the Secretary of Energy, to set the energy standards for digital-to-analog converter boxes, taking into consideration of the cost of the converter box. The standards would be required to meet the criteria specified in section 325(o) of the Energy Policy and Conservation Act, 42 U.S.C. 6295(o). Such standards would solely govern converter boxes manufactured or imported for use in the United States on and after the effective date established by the Assistant Secretary, but such limitation would not apply after May 17, 2010.

Subparagraph 701(c)(3)(C) would amend section 3005(d) of the Digital Television Transition and Public Safety Act of 2005, 47 U.S.C. 309 note, by making a conforming change.

Subsection 701(d)(1) would amend section 614(b)(4) of the Communications Act by redesignating certain provisions and inserting new provisions concerning the carriage of digital broadcast television signals by cable operators and to allow cable operators to down-convert such broadcast signals if the licensee of the broadcast television station relies on section 614 or 615 for carriage of its signal and program-related material on that cable operator's system in a relevant market. This section is not intended to alter the current rules requiring carriage of only the primary signal of the broadcaster for each must-carry station. The use of the phrases "digital video signal requiring carriage" and "digital video signal" in the language added by section 701(d) of the bill is intended to refer to primary video, since that is the only video stream "requiring" carriage under section 614 of the Cable Act, and does not affect the digital must carry obligations of cable operators.

New subparagraph 614(b)(4)(B) would require a cable operator to carry without material degradation any digital video signal and program-related material transmitted by a television station transmitting broadcast programming exclusively in the digital television service in a local market where the cable operator's cable system is located.

New subparagraph 614(b)(4)(C) would allow a cable operator to offer a broadcaster's digital video signal and program-related materials in any analog or digital format or formats, whether or not doing so requires conversion, so long as (i) the cable operator offers the signal and material in the converted analog or digital format without material degradation and (ii) also offers such signal and material in the manner required by paragraph 614(b)(4), as amended by the bill.

New subparagraph 614(b)(4)(D)(i) would require that, notwithstanding the requirement in new subparagraph 614(b)(4)(B) to carry the digital signal and material in the format transmitted by the local television station subject to the prohibition on material degradation, until February 17, 2014 a cable operator shall offer the digital signal and material in the format or formats necessary to be viewable on analog and digital televisions and would permit such cable operator to convert the digital signal and material to standard-definition digital format.

New subparagraph 614(b)(4)(D)(ii) would require a cable operator with a cable system with an activated capacity of 550 megahertz or less to offer the digital signal and material of the local television station converted to an analog format but would authorize such system operator to offer the digital video signal and any program-related material in any digital format or formats.

New subparagraph 614(b)(4)(E) would authorize a cable operator to perform any conversion permitted or required under new paragraph 614(b)(4) at any location, from the cable head-end to the customer premises, inclusive.

New subparagraph 614(b)(4)(F) would clarify that any conversion permitted or required by paragraph 614(b)(4), as amended, would not by itself be treated as material degradation.

New subparagraph 614(b)(4)(G) would clarify that the obligation to carry program-related material under paragraph 614(b)(4) as amended would be effective only to the extent technically feasible.

New subparagraph 614(b)(4)(H) would clarify that for purposes of paragraph 614(b)(4), as amended, a signal shall be in standard definition digital format if such signal meets the criteria for such format specified in section 73.682 of the FCC's rules or a successor regulation.

Subsection 701(d)(2) would amend clause (iii) of section 623(b)(7)(A) of the Communications Act to clarify that the basic tier requirements in that provision would apply to any analog signal and any digital video signal of any television broadcast station that is provided by the cable operator to any subscriber, instead of the current language which simply mentions "any signal."

Subparagraph 701(d)(2)(B) would require that with respect to any television broadcast station, subsection 701(d) and the amendments made by paragraph 701(d)(2) shall take effect on the date the broadcaster ceases transmissions in the analog television service.

Subparagraph 701(d)(3) would amend section 614 of the Communications Act by redesignating an existing subsection and inserting a new subsection 614(h) that would clarify that for purposes of sections 614 and 615, transmission of a digital signal over a cable system in a compressed bitstream shall not be considered material degradation as long as such compression does not materially affect the picture quality the consumer receives.

Subsection 701(e) would amend section 338 of the Communications Act by adding at the end a new subsection 338(l) in order to impose requirements concerning the carriage of digital broadcast television primary video by satellite carriers and to allow satellite carriers to down-convert such broadcast primary video if the licensee of the broadcast television station relies on section 338 for carriage of its signal and program-related material on that satellite carrier's system in a relevant market in the United States.

New subparagraph 338(l)(1) would require that, with respect to any television broadcast station transmitting broadcast programming exclusively in the digital television service in a local market in the United States, a satellite carrier carrying the digital signal of any other television broadcast station in that local market shall carry the station's video signal required to be carried and program-related material without material degradation, if the licensee for that station relies on section 338 to obtain carriage of the station's

video signal and program-related material on that satellite carrier's system in that market.

New subparagraph 338(l)(2) would require that a satellite carrier shall offer the video signal and program-related material of a local television station broadcasting exclusively in the digital television service in such station's format if the satellite carrier carries the video signal of any other local station in the same digital format and thus triggers the carry-one, carry-all provisions of section 338.

New subparagraph 338(l)(3) would allow a satellite carrier to offer the digital video signal and program-related material of a local television broadcast station in any analog or digital format or formats, whether or not doing so requires conversion, so long as (i) the satellite carrier offers the signal and material in the converted analog or digital format without material degradation and (ii) also offers such signal and material in the manner required by subsection 338(l), as amended by the bill.

New subparagraph 338(l)(4) would require that, notwithstanding the requirement in new paragraph 338(l)(1) or (2), to carry the digital signal and material in the format transmitted by the local television station subject to the prohibition on material degradation, until February 17, 2014, a satellite carrier shall offer the digital signal and material in the format or formats necessary to be viewable on analog and digital televisions and would permit the satellite carrier to convert the digital signal and material to standard-definition digital format in lieu of offering it in the digital format transmitted by the local television station.

New subparagraph 338(l)(5) would authorize a satellite carrier to perform any conversion permitted or required under new subsection 338(l) at any location, from the local receive facility to the customer premises, inclusive.

New subparagraph 338(l)(6) would clarify that any conversion permitted or required by subsection 338(l), as amended, would not by itself be treated as material degradation.

New subparagraph 338(l)(7) would clarify that the obligation to carry program-related material under section 338, as amended, would be effective only to the extent technically feasible.

New subparagraph 338(l)(8) would clarify that for purposes of subsection 338(l), as amended, a signal shall be in standard definition digital format if such signal meets the criteria for such format specified in section 73.682 of the FCC's rules or a successor regulation.

New subparagraph 338(l)(9) would clarify that for purposes of section 338, transmission of a digital signal by a satellite carrier in a compressed bitstream shall not be considered material degradation as long as such compression does not materially affect the picture quality the consumer receives.

Section 702. Digital stream requirement for the blind

Section 702 would ratify the FCC's video description rules for the blind that were overturned by the United States Court of Appeals for the District of Columbia Circuit and would require the FCC, within 45 days after the date of enactment, to republish such rules and authorize it to amend, repeal or otherwise modify such rules. This section would also require the FCC to initiate a proceeding within 120 days after enactment to consider incorporating acces-

sible information requirements in its video description rules and to complete that proceeding within 1 year. The section would also require the FCC to extend the video description rules to digital broadcast programming and video programming as defined in section 602(23) of the Communications Act, as appropriate in the public interest.

Although this section states that the Commission may amend, repeal or otherwise modify such rules, it is not intended that these rules be repealed in their entirety. Rather, certain rules may need to be repealed to the extent that they pertain to the transmission of analog television programming, after the transition to digital television programming is completed in 2009. For example, reliance on use of the secondary audio program channel or analog-based video descriptions may be replaced with rules that more appropriately apply to the digital television environment.

Section 703. Status of international coordination

Section 703 would require the FCC to submit a report every 6 months to Congress on the status of international coordination with Canada and Mexico of the DTV table of allotments until such coordination is complete.

Section 704. Certain border stations

Section 704 would amend section 309(j)(14) of the Communications Act to provide an additional 2 years for Spanish-language stations that serve communities within 50 miles of the United States border with Mexico to complete the transition to digital television, so long as such extension does not prevent the auction of recovered analog spectrum, prevent the use of recovered spectrum by public safety services, or interfere with any channels reserved for public safety use as designated in FCC ET Docket No. 97–157.

TITLE VIII—PROTECTING CHILDREN

Section 801. Video transmission of child pornography

This section would amend section 621 of the Communications Act to require that all video service providers comply with the Commission's regulations relative to child pornography and would direct the Commission to promulgate regulations preventing video service providers from offering child pornography.

Section 802. Additional child pornography amendments

Subsection (a) would increase the fines under 42 U.S.C. 13032(b)(4) for failure to report a violation of the enumerated sections of title 18 of the United States Code involving child pornography.

Subsection (b) would require marks or notices to be included in commercial websites that display sexually explicit material and that the first page of a website not contain sexually explicit material. The subsection would provide exceptions for websites that restrict access to a specific set of individuals. The FTC, in consultation with the Attorney General, would be charged with establishing clearly identifiable marks or notices to be used by websites. The subsection would also make clear that the requirements apply to the website and not to services that allow consumers to access

websites. The terms "website", "sexually explicit material", "Internet" and "Internet Access Service" would all be defined. A violation of this subsection would be punishable by a fine, imprisonment of not more than 5 years, or both.

Subsection (c) would amend Chapter 110 of title 18 by adding a new section.

New section 2252C(a) would make it unlawful to embed anything into the source code of a website to deceive another person into viewing obscene material or deceive a minor into viewing material that is harmful to minors.

New section 2252C(b) would define "material harmful to minors", "sex" and "source code".

New section 2252(c) would set penalties of fine, imprisonment of up to 2 years, or both, for obscene material; and a fine, imprisonment of up to 4 years, or both, for material harmful to minors.

Subsection (d) would amend section 2255(a) of title 18 to ensure that any minor who has been a victim may bring suit even after they are a minor and that the personal injury could also extend pass when the victim was a minor. The section also increases the amount of the deemed damages.

Section 803. Prevention of interactivity with commercial matter during children's programming

This section would require each cable operator, video service provider, multichannel video programming distributor, satellite carrier, or any other provider of cable or over-the-air children's programming to prevent any interactivity with such programming for the purpose of selling or promoting a product, service, or brand. The Committee would expect that children's programming be defined as the FCC defines it.

Section 804. FCC study of bus-casting

This section would require the Commission to conduct a study and report to Congress within six months on commercial proposals to broadcast radio and television material to public education students who ride school buses.

TITLE IX—INTERNET CONSUMER BILL OF RIGHTS ACT

Section 901. Short title

This section establishes the short title as the "Internet Consumer Bill of Rights Act of 2006".

Section 902. Findings

This section sets forth Congressional findings. Among the key findings are the Commission should preserve an approach that favors the free market with respect to the Internet and an approach that encourages the free-flow of ideas and information.

Section 903. Consumer Internet bill of rights

Subsection (a) would establish that every Internet service provider shall allow each subscriber to:

- Access and post any lawful content of that subscriber's choosing.
- Access any web page of that subscriber's choosing.

- Access and run any voice application, software, or service of that subscriber's choosing.
- Access and run any video application, software, or service of that subscriber's choosing.
- Access and run any email application, software, or service of that subscriber's choosing.
- Access and run any search engine of that subscriber's choosing.
- Access and run any other application, software, or service of that subscriber's choosing.
- Connect any legal device of that subscriber's choosing to the Internet access equipment of that subscriber, if such device does not harm the network of the Internet service provider.
- Receive clear and conspicuous information, in plain language, about the estimated speeds, capabilities, limitations, and pricing of any Internet service offered to the public.

Subsection (b) would state that subscribers would enjoy the rights enumerated under subsection (a) without any interference from Federal, State or local government for lawful activities, without interference from the Internet service provider, subject only to the limitations of the service that the subscriber purchased as may be clearly enumerated by the Internet service provider. As a result, subject to the limits of the service purchased, an Internet service provider cannot interfere with a subscriber's access to any legal Internet activity or slow down the subscriber's Internet service.

Section 904. Application of the First Amendment

This section would clarify that the First Amendment applies to the Internet and ensures that no Federal, State, local government or Internet service provider may alter a user's Internet experience on the basis of religious views, political views, or any other views expressed unless specifically authorized by law.

Section 905. Stand-Alone Internet service shall be offered to the public

This section would require that Internet service providers offer any Internet service that it offers as part of a bundle on an individual basis as well. This section does not require that such service be offered at the same price. The intent of the section is to help ensure that a robust Internet service marketplace develops. The only limitation on this section would be technical feasibility.

Section 905 does not require an Internet service provider to make the transmission or transport component of its Internet service separately available to a subscriber or to any other person or entity. Nothing in section 905 prohibits an Internet service provider from offering Internet service combined with any other service offering, or requires such provider to offer stand-alone Internet service at the same price as it offers such service in combination with other services.

Section 906. Network security, worms, viruses, denial of service, parental controls, and blocking child pornography

This section preserves the ability of an Internet service provider to perform network management functions that are related to the

integrity and security of the network, to offer parental controls, and to tailor services pursuant to a subscriber's request.

Section 907. Enforcement

Subsection (a) would require the Commission to establish an adjudicatory process under which subscribers may bring complaints for the violation of section 903 against Internet service providers.

Subsection (b) establishes that penalties for violations may be up to $500,000.00, per violation.

Subsection (c) would establish that equitable relief is also available to the Commission in enforcing this title.

Section 908. Commission prohibited from issuing regulations

This section would prohibit the Commission from promulgating any regulations not tied to establishing the adjudicatory process under this title. The Commission would also be prohibited from enlarging or modifying the obligations imposed on Internet service providers under this title.

Section 909. FCC review

Subsection (a) would direct the Commission to study the Internet market and report annually to Congress on a number of factors designed to ensure that Internet service providers are not acting in a manner that would limit the consumer's Internet experience or in a way that would lessen competition in any industry segment tied to the Internet.

Subsection (b) would direct the Commission to make appropriate recommendations to Congress as part of its report.

Section 910. Exceptions

Paragraph 910(1) would exclude advertising by an Internet service provider as part of the Internet service from the requirements of this title.

Paragraph 901(2) would exclude services in which Internet service is a secondary and minor component from the requirements of this title. For example, a video service provider could offer an option, in conjunction with a video service provided under title VI, that would allow consumers to purchase products that they see on video programs, with information needed to execute the transaction transmitted over the Internet. If such transmission is limited to communications needed to execute that transaction, that service would not satisfy the definition of "Internet service" and would not be subject to the requirements of this title. The Committee also notes that simply bundling an Internet service with a video service would not be interpreted as excluding the Internet service from the obligations of this title.

Section 911. FCC to revisit broadband speeds

SEction 911 would require the Commission to review its broadband speeds for definitional purposes on a biannual basis. In doing so, the Commission shall ensure that it does not define "broadband" in a way that disfavors a particular technology. As as result, the Commission may need to, at some point, define "broadband" differently for various service, i.e., wireless versus wireline services.

Section 912. Protection of emergency communications

This section would clarify the duty of Internet providers to ensure the necessary priority for the timely and effective delivery of 911 and E–911 emergency communications.

Section 913. Definitions

This section would define the terms "Internet service" and "subscriber". The definition of subscriber is intended to focus on those who use the Internet for their individual use and does not include the Internet service that a company like Google or Yahoo might purchase in connection with their company's offerings to other Internet users.

TITLE X—MISCELLANEOUS

Section 1001. Commissioner participation in forums and meetings

Section 1001 would amend 47 U.S.C. § 155 to allow more flexibility for FCC Commissioners to meet with one another.

Section 1002. Office of Indian Affairs

Section 1002 would establish an Office of Indian Affairs within the FCC and provide direction concerning the relationship of such office to Tribal Governments. This section would also set forth the purposes of such office.

Section 1003. Office of Consumer Advocate

Section 1003 would establish an Office of Consumer Advocate within the FCC, to be headed by a Director appointed by the FCC. This section provides that such office shall be independent of other bureaus and offices of the FCC but that its staff shall be bound by the same code of conduct, personnel practices and other relevant practices and procedures as the FCC. This section would also set forth the procedures for appointing and removing the Director of such office, as well as various characteristics of such position such as term, qualifications, duties, responsibilities and authority.

Subsection 1003(g) would require that the Director of the Office of Consumer Advocate, in exercising discretion as to whether the Office will represent residential consumers in a particular matter, shall consider the importance and extent of the interests and whether those interests would be adequately represented. In cases where there may be a conflict among or between classes of residential consumers in a particular matter, the Director would be authorized to choose to represent one of the interests or none of the interests.

Subsection 1003(h) would establish an Advisory Committee to assist the Director of the Office of Consumer Advocate in carrying out the Director's duties, as appropriate and reasonable. This subsection would set forth requirements concerning such Advisory Committee's composition, and the qualification of its members.

Subsection 1003(i) would provide that the FCC budget would include an account separate from other FCC bureaus and offices, which would be used exclusively by the Office in the performance of its duties. It would also require that the budget for the Office be separately identified in the FCC's annual budget request and

that $200,000 be authorized to be made available to the Office for each fiscal year.

Subsection 1003(j) would clarify that the creation of the Office shall in no way derogate the standing of any State consumer advocate or any national association of State consumer advocates to appear before the Commission.

Section 1004. Data on local competition in different product markets

Subsection 1004(a) of the bill would require that not later than 180 days after enactment, and every year thereafter, the FCC shall conduct an inquiry regarding the extent to which providers of communications service have deployed their own local transmission facilities.

Subsection 1004(b) would require all providers of communications service to submit annual reports to the FCC describing the extent to which they have deployed their own local transmission facilities, and that in defining product markets for such reports the FCC use the methodology set forth in the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, and distinguishing at a minimum between the products demanded by residential customers, small and medium-sized business customers and large business customers.

Subsection 1004(c) would require that not later than one year after enactment and each year thereafter, the FCC report to the Congress on the extent to which providers of telecommunications service, broadband service (at least 200 kilobits per second in at least 1 direction) and IP-enabled voice service have deployed their own local transmission facilities, with such report analyzing separately the extent of actual facilities-based competition in each wire center in the product markets defined by the FCC for purposes of subsection 1004(b).

Subsection 1004(d) would define the following terms: (1) "broadband service", (2) "communications service", (3) "IP-enabled voice service", and (4) "local transmission facilities".

Section 1005. Improved enforcement options

Section 1005 of the bill would amend section 503(b)(2)(B) of the Communications Act by increasing ten-fold the penalties that may be assessed against common carriers. This section would also amend section 503(b)(6) to impose a statute of limitations of 3 years for violations.

Subsection 1005(c) would amend section 503(b) of the Communications Act to limit the circumstances under which an independent network affiliate may be fined for violation of title 18, United States Code.

Section 1006. Mobile services terms and conditions

Subsection 1006(a) of the bill would expand subparagraph (A) of section 332(c)(3) of the Communications Act to preempt State laws from regulating or adjudicating terms or conditions of commercial mobile service or private mobile service except for State laws of general applicability.

Subsection 1006(b) of the bill would require the FCC to adopt within 1 year of enactment a final rule establishing customer serv-

ice and consumer protection requirements for providers of commercial mobile service or private mobile service, as such terms are defined in section 332 of the Communications Act.

Subsection 1006(c) would require that the amendments required by subsection 1006(a) of the bill take effect 180 days after the FCC adopts the final FCC rule required by subsection 1006(b).

Subsection 1006(d) would require the FCC to initiate and conclude not later than 180 days after enactment a proceeding to prevent a telecommunications carrier from listing any charge or fee on a subscriber's billing statement as a separate charge or fee unless it is a charge or fee (i) for telecommunications service or other services provided to a subscriber, (ii) for nonpayment, early termination of service, or other lawful penalty, (iii) for Federal, State, or local sales or excise taxes, or (iv) that is expressly authorized by law or regulation to appear on a billing statement as a separately stated charge or fee.

Section 1007. Severability

Section 1007 would provide that any provision in the Act held to be unconstitutional shall not affect remaining provisions not addressed by such holding.

Section 1008. Clarification of certain jurisdictional issues

Section 1008 would codify the FCC's decisions in the *vonage* and *pulver.com* proceedings, WC Dockets No. 03–211 and 03–45, and would prohibit the Commission from taking action to undermine, alter or amend such decisions except to apply such decisions to similar services sharing similar basic characteristics. This section would also dismiss any pending challenges to the *vonage* and *pulver.com* decisions and would clarify that nothing in the section shall be construed to supersede or preempt the consumer protection laws of any State, including any privacy or anti-child pornography law of a State, except to the extent that such laws regulate the rates for entry or exit by a service provider.

Section 1009. FCC to issue a further notice of proposed rulemaking before changing the broadcast media ownership rules

Section 1009 of the bill would require that before the FCC changes section 73.3555 of its rules, as those regulations were in effect on June 1, 2003, the FCC must issue a further Notice of Proposed Rulemaking with respect to any such changes. This section would declare null and void the cross-media limits rule adopted by the FCC on June 2, 2003, pursuant to its proceeding on broadcast media ownership rules, FCC 03-127, and would reinstate with effect from June 2, 2003, the FCC's rule 73.3555, as those rules were in effect.

Section 1010. Diversity in media ownership

Section 1010 of the bill would prohibit the FCC from promulgating rules regarding media ownership without first completing its section 257 proceeding initiated on June 15, 2004, concerning localism and diversity in media ownership.

Section 1011. Broadband reporting requirements

Section 1011 of the bill would require that, within 180 days of enactment, the FCC amend its rules requiring collection of data twice a year through its Form 477, which provides a snapshot of broadband deployment and local phone competition throughout the United States. This section would require that broadband service providers report information, by zip code where broadband service is provided, including the percentage of households offered service and the percentage of such households subscribing, as well as the average price per megabyte of download and upload speed, the broadband service's actual average throughput, and contention ratio of the number of users sharing the same line. The FCC would, however, be required to exempt a broadband service provider from such reporting requirements if a provider's compliance is cost prohibitive, as defined and determined by the FCC. This section would further require that, with respect to areas unserved by any broadband service provider, the FCC use Census Bureau data to provide an annual report to Congress with information on such area's population, population density and average per capita income.

Section 1012. Application of one-year restrictions to certain positions

Section 1012 of the bill would deem certain positions at the FCC to be subject to the limitations on employment under 18 U.S.C. 207(c)(2)(A)(ii), regardless of basic pay. This would prohibit FCC bureau chiefs and persons in similar positions at the FCC from lobbying the FCC until one year after leaving the FCC.

Section 1013. Internet Tax Freedom Act Amendment

Section 1013 of the bill would amend section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) to make that Act permanent. This would permanently extend that Act's provisions barring State governments from taxing Internet access services, which provisions are currently scheduled to expire on November 1, 2007.

Section 1014. Status of E–911 Implementation and Coordination Office

Section 1014 of the bill would require the NTIA and National Highway Traffic Safety Administration to submit with 90 days of enactment, a report to Congress on the progress of the E–911 Implementation and Coordination Office and plans of that Office to meet the requirements established in P.L. 108–494.

Section 1015. Federal Communications Commission telemedicine report

Section 1015 would require the Commission to submit within 180 days of enactment a report to Congress concerning telemedicine applications with regard to their use of broadband connections, including price information for such connections.

Section 1016. Federal information and communications technology research

Section 1016 of the bill would require the Director of the National Science Foundation (NSF) to establish a program of basic research regarding the availability and affordability of advanced com-

munications services to all Americans. It also establishes a Federal Advanced Information and Communications Technology Research Board within the NSF and authorizes research grants.

Subsection 1016(b) would direct the Commission and NTIA to develop a plan to increase the sharing of spectrum between Federal and non-Federal Government users and to establish a pilot program for that purpose. It also would direct the Commission and NTIA to identify 10 megahertz of spectrum for the pilot program and requires a report to Congress on the program within 2 years.

Section 1017. Forbearance

Section 1017 of the bill would amend section 10 of the Communications Act, which requires the FCC to forbear from regulating telecommunications carriers or telecommunications services, or classes thereof, under certain circumstances. This section would change the current provision in section 10 by which forbearance would be deemed to apply if the FCC does not deny a forbearance petition within the statutory time limit and insert a provision instead that requires a petition to be voted on by the FCC within that time period. This section would also clarify that the FCC may grant or deny a petition, but must do so by majority vote.

Section 1018. Deadline for certain Commission proceedings

Section 1018 would require the FCC to complete, within 270 days of enactment its proceedings on special access rates in FCC Dockets No. 05–25 and 01–321.

TITLE XI—LOCAL COMMUNITY RADIO ACT

Section 1101. Short title

Section 1101 would provide the short title for title XI of the bill, the "Local Community Radio Act of 2006."

Section 1102. Repeal of prior law

Section 1102 would repeal language in the 2000 Commerce, State, and Justice Appropriations bill that required the FCC to delay the licensing of LPFM stations on third adjacent channels to full power FM stations. See section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (Public Law 106–553; 114 Stat. 16 2762A–111).

Section 1103. Minimum distance separation requirements

Section 1103 would direct the FCC to modify its rules to eliminate third adjacent minimum distance separation requirements between LPFM stations and full power FM stations, FM translator stations, and FM booster stations.

Section 1104. Protection of radio reading services

Section 1104 would provide interference protection to "radio reading service" (RRS) stations that provide reading services over the radio frequencies to assist the blind. These stations broadcast using a sub-carrier frequency, which is more susceptible to LPFM interference due to its spacing on an FM channel. The FCC currently has a temporary rule preventing LPFM stations from oper-

ating on a third adjacent channel to a RRS. This section would direct the FCC to make this rule permanent.

Section 1105. Ensuring availability of spectrum for LPFM stations

Section 1105 would require the FCC when licensing FM translator stations to ensure that licenses are available to both FM translator stations and low-power FM stations, according to the needs of the local community.

Section 1106. Federal Communications Commission rules

Section 1106 would direct the FCC to retain its third-adjacent channel protection for full-power FM stations in certain significantly populated States.

TITLE XII—CELL PHONE TAX MORATORIUM

Section 1201. Short title

Section 1201 would provide the short title for title XII of the bill, the "Cell Phone Tax Moratorium Act of 2006."

Section 1202. Moratorium

Section 1202 would for three years after enactment prohibit States and localities from levying new taxes that single out wireless phone service, but would not affect existing taxes.

TITLE XIII—TRUTH IN CALLER ID

Section 1301. Short title

Section 1301 would provide the short title for title XIII of the bill, the "Truth in Caller ID Act of 2006."

Section 1302. Prohibition regarding manipulation of caller identification information

Section 1302 of the bill would make it unlawful to cause any caller identification service to transmit misleading or inaccurate caller identification information and would require the FCC to adopt rules within 6 months of enactment to implement such prohibition and to report to Congress as to whether additional legislation is necessary.

TITLE XIV—RURAL WIRELESS AND BROADBAND SERVICE

Section 1401. Short title

Section 1402 would provide the short title for title XIV of the bill, the "Rural Wireless and Broadband Service Act of 2006."

Section 1402. Small geographic licensing areas

Section 1402 would amend section 309(j)(4)(C) of the Communications Act to require the FCC to consider licensing spectrum in smaller geographic areas in order to encourage wireless deployment and build-out in rural and underserved areas.

Section 1403. Report on the impact of secondary market transactions

Section 1403 would amend subsection 309(j) of the Act by adding a new paragraph 309(j)(17).

New subparagraph 309(j)(17) would require the FCC to within 2 years after enactment, and every 2 years thereafter, to report to Congress analyzing and evaluating the impact of the FCC's rules concerning spectrum leasing, as well as its spectrum partitioning and spectrum disaggregation rules, in facilitating the deployment of wireless services, particularly in rural and underserved areas.

New subparagraph 309(j)(18) would require the FCC, in coordination with NTIA, to develop an integrated national database the provides detailed information about spectrum assignments and licensing, but would specifically prohibit providing public access to information protected under chapter 5 of title 5, United States Code, or information that if disclosed would compromise national security.

Section 1404. Radio spectrum review

Section 1404 would amend Part I of title III of the Communications Act by inserting a new section 344 that would require the FCC to review spectrum use.

New subsection 344(a) would require that not later than 5 years after enactment, and every 5 years thereafter, the FCC and NTIA shall conduct a band-by-band analysis of the spectrum managed by each agency and report to Congress on any bands that are not being effectively or efficiently utilized.

New subsection 344(b) would authorize the FCC and NTIA, in conducting the analysis required by new subsection 344(a), to require licensees and other spectrum users to provide spectrum usage information and would exempt the collection of such information from the Paperwork Reduction Act.

Section 1405. 700 MHz license areas

Section 1405 would require the FCC, within 180 days after enactment, to initiate a rulemaking to reconfigure portions of the 700 MHz band, including that portion that will contain recovered analog spectrum to be auctioned beginning on January 28, 2008 under the Deficit Reduction Act, for small geographic licenses areas. This section would require that such rulemaking must consider the January 28, 2008 auction and the promotion of infrastructure build-out and service to rural areas as well as the competitive benefits, unique characteristics, and special needs of regional and smaller wireless carriers. The FCC's reconfiguration rulemaking would be subject to the restriction in section 1406.

Section 1406. No interference with DTV transition

Section 1406 would prohibit the FCC from undertaking any reconfiguration of the band plan under section 1405 if such reconfiguration would be likely to delay the auction of recovered spectrum or the terminations of licenses required by section 3002(b) of the Deficit Reduction Act, P.L. 109–171.

Section 1407. Effective date

Section 1407 would provide that title XIV and the amendments made by it would take effect 90 days after enactment.

[The Committee directs the FCC to complete action no later than 6 months after enactment of this Act in the FCC's pending proceeding regarding whether certain restrictions on antenna installa-

tion are permissible under the FCC's Over-the-Air Reception Devices (OTARD) Rules (ET Docket No. 05–247).]

ROLLCALL VOTES IN COMMITTEE

Senator Sununu offered an amendment to the bill that would codify the FCC's decisions in the *vonage* and *pulver.com* proceedings, WC Dockets No. 03–211 and 03–45, and would prohibit the Commission from taking action to undermine, alter or amend such decisions except to apply such decisions to similar services sharing similar basic characteristics. The amendment also would dismiss any pending challenges to the *vonage* and *pulver.com* decisions and would clarify that nothing in the section shall be construed to supersede or preempt the consumer protection laws of any State, including any privacy or anti-child pornography law of a State, except to the extent that such laws regulate the rates for entry or exit by a service provider. By a roll call vote of 14 yeas and 8 nays as follows, the amendment was adopted.

YEAS—14	NAYS—8
Mr. McCain[1]	Mr. Burns
Mr. Lott[1]	Mr. Vitter
Mrs. Hutchison[1]	Mr. Inouye
Ms. Snowe	Mr. Rockefeller[1]
Mr. Smith	Mr. Kerry[1]
Mr. Ensign	Mr. Dorgan
Mr. Allen	Mr. Nelson of Nebraska
Mr. Sununu	Mr. Pryor
Mr. DeMint	
Mrs. Boxer	
Mr. Nelson of Florida	
Ms. Cantwell	
Mr. Lautenberg	
Mr. Stevens	

[1]By proxy

Senator Dorgan offered an amendment to the bill that would strike the preemption provisions added by the Sununu amendment. By a roll call vote of 15 nays and 7 yeas, the amendment was defeated.

YEAS—7	NAYS—15
Mr. Inouye	Mr. McCain[1]
Mr. Rockefeller	Mr. Burns
Mr. Kerry	Mr. Lott
Mr. Dorgan	Mrs. Hutchison[1]
Mr. Nelson of Florida[1]	Ms. Snowe[1]
Mr. Nelson of Nebraska[1]	Mr. Smith[1]
Mr. Pryor	Mr. Ensign
	Mr. Allen
	Mr. Sununu
	Mr. DeMint[1]
	Mr. Vitter
	Mrs. Boxer
	Ms. Cantwell
	Mr. Lautenberg[1]
	Mr. Stevens

[1]By proxy

Senator Rockefeller offered an amendment that would make available from the universal service fund amounts to pay for discounted interoperable emergency communications equipment for police, firemen, and medical response personnel. By a roll call vote of 10 yeas and 12 nays as follows, the amendment was defeated.

YEAS—10	NAYS—12
Mr. Inouye	Mr. McCain[1]
Mr. Rockefeller	Mr. Burns
Mr. Kerry	Mr. Lott
Mr. Dorgan	Mrs. Hutchison[1]
Mrs. Boxer	Ms. Snowe[1]
Mr. Nelson of Florida[1]	Mr. Smith[1]
Ms. Cantwell	Mr. Ensign
Mr. Lautenberg[1]	Mr. Allen
Mr. Nelson of Nebraska[1]	Mr. Sununu
Mr. Pryor	Mr. DeMint[1]
	Mr. Vitter
	Mr. Stevens

[1]By proxy

Senator Dorgan offered an amendment that would preserve the authority of local franchising authorities to review the sale of video service providers as provided in current law. By a roll call vote of 9 yeas and 13 nays as follows, the amendment was defeated.

YEAS—9	NAYS—13
Mr. Inouye	Mr. McCain[1]
Mr. Rockefeller	Mr. Burns
Mr. Dorgan	Mr. Lott
Mrs. Boxer	Mrs. Hutchison[1]
Mr. Nelson of Florida	Ms. Snowe
Ms. Cantwell[1]	Mr. Smith[1]
Mr. Lautenberg	Mr. Ensign
Mr. Nelson of Nebraska	Mr. Allen[1]
Mr. Pryor	Mr. Sununu
	Mr. DeMint[1]
	Mr. Vitter[1]
	Mr. Kerry
	Mr. Stevens

[1]By proxy

Senator Lautenberg offered an amendment that would allow States to enact consumer protection laws governing video programmers. By a roll call vote of 10 yeas and 12 nays as follows, the amendment was defeated.

YEAS—10	NAYS—12
Mr. Inouye[1]	Mr. McCain[1]
Mr. Rockefeller[1]	Mr. Burns
Mr. Kerry[1]	Mr. Lott
Mr. Dorgan	Mrs. Hutchison[1]
Mrs. Boxer	Ms. Snowe
Mr. Nelson of Florida	Mr. Smith[1]
Ms. Cantwell	Mr. Ensign
Mr. Lautenberg	Mr. Allen
Mr. Nelson of Nebraska	Mr. Sununu

Mr. Pryor
Mr. DeMint
Mr. Vitter
Mr. Stevens

[1]By proxy

Senator Lautenberg offered an amendment that would grandfather existing statewide video franchises adopted before December 31, 2006. By a roll call vote of 8 yeas and 14 nays as follows, the amendment was defeated.

YEAS—8

Mrs. Hutchison[1]
Mr. Inouye
Mr. Rockefeller[1]
Mr. Kerry[1]
Mr. Dorgan
Mrs. Boxer
Mr. Lautenberg
Mr. Nelson of Nebraska

NAYS—14

Mr. McCain[1]
Mr. Burns
Mr. Lott
Ms. Snowe
Mr. Smith[1]
Mr. Ensign
Mr. Allen
Mr. Sununu
Mr. DeMint
Mr. Vitter
Mr. Nelson of Florida
Ms. Cantwell
Mr. Pryor
Mr. Stevens

[1]By proxy

Senator Dorgan offered an amendment that would broaden the jurisdiction of the Federal Trade Commission to protect consumers from unfair and deceptive acts by communications carriers. By a roll call vote of 9 yeas and 12 nays as follows, the amendment was defeated.

YEAS—9

Ms. Snowe
Mr. Inouye
Mr. Rockefeller[1]
Mr. Kerry
Mr. Dorgan
Mrs. Boxer
Ms. Cantwell
Mr. Lautenberg[1]
Mr. Pryor

NAYS—12

Mr. Burns
Mr. Lott[1]
Mrs. Hutchison[1]
Mr. Smith
Mr. Ensign
Mr. Allen[1]
Mr. Sununu
Mr. DeMint
Mr. Vitter[1]
Mr. Nelson of Florida
Mr. Nelson of Nebraska
Mr. Stevens

[1]By proxy

Senators Kerry and Boxer offered an amendment that would mandate build-out requirements for new video service providers. By a roll call vote of 10 yeas and 12 nays as follows, the amendment was defeated

YEAS—10

Ms. Snowe
Mr. Inouye
Mr. Rockefeller
Mr. Kerry

NAYS—12

Mr. McCain
Mr. Burns
Mr. Lott
Mrs. Hutchison[1]

Mr. Dorgan
Mrs. Boxer
Mr. Nelson of Florida
Ms. Cantwell
Mr. Lautenberg[1]
Mr. Pryor

Mr. Smith
Mr. Ensign
Mr. Allen
Mr. Sununu
Mr. DeMint
Mr. Vitter[1]
Mr. Nelson of Nebraska
Mr. Stevens

[1]By proxy

Senator McCain offered an amendment that would promote availability of LPFM radio stations that broadcast in a radius of three to five miles. By a roll call vote of 14 yeas and 7 nays as follows, the amendment was adopted.

YEAS—14

Mr. McCain
Mr. Lott
Mr. Allen
Mr. Sununu
Mr. Vitter[1]
Mr. Inouye
Mr. Rockefeller
Mr. Kerry[1]
Mr. Dorgan
Mrs. Boxer
Mr. Nelson of Florida[1]
Ms. Cantwell
Mr. Lautenberg
Mr. Pryor

NAYS—7

Mr. Burns
Ms. Snowe
Mr. Smith[1]
Mr. Ensign
Mr. DeMint
Mr. Nelson of Nebraska
Mr. Stevens

[1]By proxy

Senators McCain, Allen, Bill Nelson and Stevens offered an amendment that would impose a 3-year moratorium on cell phone-specific taxes. By a roll call vote of 21 yeas and 1 nay as follows, the amendment was adopted.

YEAS—21

Mr. McCain
Mr. Burns
Mr. Lott
Mrs. Hutchison[1]
Ms. Snowe
Mr. Smith[1]
Mr. Ensign[1]
Mr. Allen
Mr. Sununu[1]
Mr. DeMint
Mr. Vitter[1]
Mr. Inouye
Mr. Kerry[1]
Mr. Dorgan
Mrs. Boxer
Mr. Nelson of Florida[1]
Ms. Cantwell
Mr. Lautenberg
Mr. Nelson of Nebraska

NAYS—1

Mr. Rockefeller

Mr. Pryor
Mr. Stevens

[1]By proxy

Senator McCain offered an amendment that would require that multichannel video programming distributors offer their video programming on an á la carte basis. By a roll call vote of 2 yeas and 20 nays as follows, the amendment was defeated.

YEAS—2	NAYS—20
Mr. McCain	Mr. Burns
Ms. Snowe	Mr. Lott
	Mrs. Hutchison[1]
	Mr. Smith[1]
	Mr. Ensign
	Mr. Allen
	Mr. Sununu
	Mr. DeMint
	Mr. Vitter[1]
	Mr. Inouye
	Mr. Rockefeller
	Mr. Kerry[1]
	Mr. Dorgan
	Mrs. Boxer
	Mr. Nelson of Florida[1]
	Ms. Cantwell
	Mr. Lautenberg
	Mr. Nelson of Nebraska
	Mr. Pryor
	Mr. Stevens

[1]By proxy

Senator Allen offered an amendment that would impose a permanent moratorium on Internet access taxes. By a roll call vote of 19 yeas and 3 nays as follows, the amendment was adopted.

YEAS—19	NAYS—3
Mr. McCain[1]	Mr. Rockefeller
Mr. Burns	Mr. Dorgan
Mr. Lott	Mr. Lautenberg
Mrs. Hutchison[1]	
Ms. Snowe	
Mr. Smith[1]	
Mr. Ensign	
Mr. Allen	
Mr. Sununu	
Mr. DeMint	
Mr. Vitter[1]	
Mr. Inouye	
Mr. Kerry[1]	
Mrs. Boxer	
Mr. Nelson of Florida[1]	
Ms. Cantwell	
Mr. Nelson of Nebraska[1]	
Mr. Pryor[1]	
Mr. Stevens	

[1]By proxy

Senators Snowe and Dorgan offered an amendment that would impose nondiscrimination obligations on broadband network operators. By a roll call vote of 11 yeas and 11 nays as follows, the amendment was defeated.

YEAS—11	NAYS—11
Ms. Snowe	Mr. McCain[1]
Mr. Inouye	Mr. Burns
Mr. Rockefeller	Mr. Lott
Mr. Kerry	Mrs. Hutchison[1]
Mr. Dorgan	Mr. Smith
Mrs. Boxer	Mr. Ensign
Mr. Nelson of Florida	Mr. Allen
Ms. Cantwell	Mr. Sununu
Mr. Lautenberg[1]	Mr. DeMint
Mr. Nelson of Nebraska[1]	Mr. Vitter[1]
Mr. Pryor	Mr. Stevens

[1]By proxy

Senator Boxer offered an amendment that would retain basic cable rate regulation in markets for a longer period than provided for in the bill. By a roll call vote of 10 yeas and 12 nays as follows, the amendment was defeated.

YEAS—10	NAYS—12
Mr. Inouye	Mr. McCain[1]
Mr. Rockefeller	Mr. Burns
Mr. Kerry[1]	Mr. Lott[1]
Mr. Dorgan	Mrs. Hutchison[1]
Mrs. Boxer	Ms. Snowe
Mr. Nelson of Florida	Mr. Smith[1]
Ms. Cantwell	Mr. Ensign[1]
Mr. Lautenberg[1]	Mr. Allen
Mr. Nelson of Nebraska[1]	Mr. Sununu
Mr. Pryor	Mr. DeMint
	Mr. Vitter[1]
	Mr. Stevens

[1]By proxy

Senator Inouye offered an amendment that would strike the bill in its entirety and replace it with a complete substitute. By a roll call vote of 10 yeas and 12 nays as follows, the amendment was defeated.

YEAS—10	NAYS—12
Mr. Inouye	Mr. McCain[1]
Mr. Rockefeller	Mr. Burns
Mr. Kerry[1]	Mr. Lott[1]
Mr. Dorgan	Mrs. Hutchison[1]
Mrs. Boxer	Ms. Snowe
Mr. Nelson of Florida	Mr. Smith[1]
Ms. Cantwell	Mr. Ensign[1]
Mr. Lautenberg	Mr. Allen
Mr. Nelson of Nebraska[1]	Mr. Sununu
Mr. Pryor	Mr. DeMint
	Mr. Vitter[1]
	Mr. Stevens

[1]By proxy

The Full Committee ordered H.R. 5252 to be reported favorably with amendments by a roll call vote of 15 yeas and 7 nays as follows.

YEAS—15

Mr. McCain
Mr. Burns
Mr. Lott[1]
Mrs. Hutchison[1]
Ms. Snowe
Mr. Smith[1]
Mr. Ensign[1]
Mr. Allen
Mr. Sununu
Mr. DeMint
Mr. Vitter[1]
Mr. Inouye
Mr. Nelson of Nebraska[1]
Mr. Pryor
Mr. Stevens

[1]By proxy

NAYS—7

Mr. Rockefeller
Mr. Kerry[1]
Mr. Dorgan
Mrs. Boxer
Mr. Nelson of Florida
Ms. Cantwell
Mr. Lautenberg

ADDITIONAL VIEWS OF SENATORS INOUYE, DORGAN, AND BOXER

While some of us opposed the Advanced Telecommunications and Opportunity Reform Act of 2006 (H.R. 5252) and others of us voted to report this bill out of committee, all of us agree that the major provisions of this bill—which were virtually unchanged through the Committee process—fail to meaningfully advance the cause of competition without eviscerating important consumer protections. With respect to video franchising, the bill would adopt a new framework that would eliminate important consumer protections, widen our nation's "digital divide" and override recent State efforts to streamline entry and promote meaningful competition.

With respect to network neutrality, the bill wholly fails to reestablish needed protections that would prohibit broadband network operators from unfairly discriminating against rival providers of communications services. Such an omission ignores the lessons of history as well as the recent statements of Bell executives who have openly expressed their desire to use their bottleneck control over network transmission as a means to charge service providers for access to broadband customers. Without stronger statutory protections, the "rights" granted to consumers in this legislation will be cold comfort to consumers whose choices will be controlled by the decisions of network gatekeepers.

And finally, we remain concerned that a variety of provisions in the bill preempting State authority have not received sufficient scrutiny and represent emotional reactions to concerns about the impact of State regulation on the growth of communications services. As a result, we think greater care and attention to these issues must be given by Congress in order to avoid the unintended consequences of such actions.

While we recognize that many items in the Senate communications bill are either noncontroversial or have been improved through the committee amendment process, the presence of such items does not outweigh our substantial concerns with core components of the bill. As a result, without significant improvements to the current bill on these key issues, we cannot support further consideration of this legislation in the 109th Congress.

The Senate bill fails to promote innovation and competition by prohibiting broadband network operators from unfairly discriminating against their rivals.

Over a relatively short period in our nation's history, the Internet has grown from a university research project into a robust engine for innovation, economic growth, social discourse, and the free flow of ideas. Its rapid evolution has been fueled not only by the "end-to-end" principle, which guided its original architectural design, but also by specific legal protections pre-dating the original

Communications Act of 1934 that required operators of communications networks to abide by principles of nondiscrimination.

These protections have been critical to the growth of the Internet. Because networks have been managed neutrally and without bias, they have supported a free market for innovation and consumer choice that has encouraged entrepreneurs and innovators to launch businesses without any fear that a gatekeeper would prevent them from reaching potential customers. This important safeguard against discrimination and prohibitive access costs has prompted an explosion of investment and innovation at the edges of the network. As one of the fathers of the Internet, Vint Cerf, testified before Congress: the Internet represents "innovation without permission." But that is not an accident; it is a product of specific legal protections that were in place until August 2005 and now have been swept away.

The core value behind this principle of nondiscrimination is that consumers and the marketplace can better decide what content will succeed or fail on the Internet, and not a telephone or cable company executive. With these legal protections in place, anyone with a good idea has been able to use the Internet to connect with consumers and to compete on a level playing field for consumers' business. As a result, the marketplace has picked winners and losers, and not a central gatekeeper. This bedrock concept of connecting innovators and consumers without interference—commonly referred to as "net neutrality"—has been a hallmark feature of the Internet and is a principal reason why America leads the world in online innovation. But had the narrowband Internet of the 1990s been limited only to content chosen by the local telephone companies, it never would have developed into the broadband Internet of 2006.

There is a critical need for nondiscrimination rules to be restored, because the market cannot solve this problem. The broadband market is not competitive today, nor will it be for the foreseeable future. No competition means broadband operators can do whatever they want, and consumers have little or no choice but to accept that bad outcome. The latest Federal Communications Commission report on broadband shows that the local cable and telephone companies have a 98 percent share of the national broadband residential access market. However, even these statistics significantly overstate the case of competition as they rely on the assumption that providers offering broadband to any subscriber in a zip code similarly provide such service to all subscribers in that zip code. As noted by Government Accountability Office in May 2006, this methodology "overstates the level of competition to individual households" and obscures the fact that the median number of broadband providers available to consumers is two. Experts appearing before the Committee indicated that the duopoly situation will not change any time soon. As a consequence of this lack of competition, the market provides no protection against anti-competitive or discriminatory behavior. When consumers have at best two options for broadband providers, and many consumers have just one option, there is a market failure and additional protections are needed.

Regrettably, provisions in the Senate bill addressing the issue of "net neutrality" fall well short of providing effective protection against unfair discrimination by broadband network operators.

First, the Senate bill fails to include any provisions to protect rival content and applications providers from unfair discrimination by network operators. Under Title IX of the bill, network operators would be free to give special treatment to favored service providers, or no service to disfavored providers. As a result, such power could be used to frustrate competition through the creation of a "two-tiered" Internet where network operators control which content and service providers would be allowed to access Internet "fast lanes" and which providers would be relegated to an increasingly crowded "slow lane."

Second, the so-called "consumer rights" set forth in the Senate bill are insufficient to protect consumers' interest in fair and open competition on the Internet. Because the newly created "rights" in the bill apply only to Internet "subscribers," the bill fails to recognize that discriminatory decisions made by network operators against rival providers have a profound impact on both the nature and quality of the choices available to consumers. As a result, the absence of nondiscriminatory protections in the bill seriously undermines the value of these new rights.

Third, the Senate bill would unwisely limit the FCC's authority to address problems of discriminatory behavior. By expressly barring the FCC from issuing rules to remedy discriminatory practices or from modifying the obligations imposed on ISPs through the adjudicatory process, the bill would unwisely curtail the authority of the Commission to act in the public interest to remedy unanticipated problems.

During consideration of H.R. 5252 in committee, Senators Snowe, Dorgan, Kerry, Boxer and Cantwell offered an amendment to remedy the legislation's failure to preserve the fundamental principle of nondiscrimination that had shaped the development and growth of the Internet and had been in place until recent Federal Communications Commission and Supreme Court decisions. This amendment failed on a tie 11-11 vote.

Importantly, this amendment would have allowed broadband operators to offer their customers differing speed or price options for broadband services, or to prioritize certain categories of traffic, for example, to slow down spam or prioritize video services. However, the Snowe-Dorgan amendment would ensure that a broadband operator could not discriminate according to the source or ownership of Internet content. Network operators would not be permitted to pick winners and losers for consumers. Instead, consumers would keep the power to choose for themselves.

The Internet has never operated on a model where a broadband operator looks at who is sending the traffic; it should only look at what it is—is it video, is it spam? Broadband operators should be able to manage the network to deliver types of traffic in an efficient manner; they should not be able to manage the network based on the source of the content (such as an affiliate) or how much a content provider can afford to pay to reach the consumer.

H.R. 5252 purports to promote broadband and video competition. Yet without provisions to protect this core Internet freedom, the

legislation will allow broadband operators to use the networks built as a result of this bill and then act in discriminatory and anti-competitive ways toward Internet content, service and applications providers that rely on these broadband networks to reach consumers. Consumers will lose the free and open Internet that has spurred innovation and rapid development in education, medicine, business, and broadband deployment. Instead, it will be subject to the demands and criteria of those that control the networks.

The Senate bill will exacerbate America's "digital divide" through its failure to require cable and telephone network operators to upgrade their systems uniformly over a reasonable period of time.

Traditional cable franchises generally contain standard terms requiring operators to provide service to all households within a franchise area, subject to certain density requirements. This obligation is reasonable and appropriate given the permission granted by the community to the operator for use of the public rights-of way. In contrast, the Senate version of H.R. 5252 eliminates the current mode of franchising that relies on "negotiated agreements" and instead establishes a "form agreement" that States and localities must use and that imposes no obligation on video service providers to extend services to all households in a community within a reasonable period of time.

In the absence of a requirement on operators to upgrade their networks uniformly over a reasonable period of time, such operators will selectively pick and choose to upgrade some neighborhoods and will ignore others where profit margins are not as high. If such "cherry-picking" is allowed, it will mean that only certain "high-value" households will receive the benefits of new competition from phone companies and that cable companies would similarly be able to target future upgrades to particular neighborhoods.

Morever, because the framework for franchising created under the bill applies not only to new entrants, but also to incumbent cable operators, such operators will be allowed to escape existing service obligations upon the expiration of their existing terms whether or not a new competitor begins providing competitive service in the franchise area. At best, this will mean that future network upgrades by incumbent operators will no longer be subject to requirements that ensure universal availability within a franchise area. At worst, it will permit incumbent cable operators to withdraw from less profitable areas where they currently provide service, even where no new competitive alternatives exist.

Finally, the likelihood of discriminatory deployment of broadband networks is not lessened by the bill's new, anti-redlining provisions. Indeed, anti-redlining provisions in the past have only been effective because they exist in tandem with the ability of local governments to require service to all homes over time. In contrast, the new redlining provisions weaken, rather than strengthen, protections in existing law, by limiting enforcement to the discretion of the State Attorney General rather than the franchise area in question, and by creating gaping loopholes where an operator could be excused from liability on the basis of "commercial feasibility" even though redlining prohibitions emphatically state that discrimination on the basis of household income is forbidden.

To remedy these concerns and to ensure that video providers extend their networks to all households within their existing network footprint, Senators Kerry and Boxer offered an amendment during the mark-up to require video service providers to build out service to every household in the community as most cable companies have done for two decades.

Under the Amendment, build out obligations were tied to two factors-time and the establishment of effective competition. This plan would place no requirements on the new video provider for 3 years. The operator would be free to pick and choose where it goes and serve whomever it pleases, subject to the anti-redlining provisions in the bill. After three years, if the company has captured 15 percent of the market in the service area it has chosen, it would be required to expand its service area by 20 percent of the households in the local franchise area served by the cable incumbent. This pattern would be repeated every 2 years, incrementally achieving universal availability of video competition. The FCC was empowered to grant exemptions. This is a less aggressive build-out schedule than what is being negotiated in the private market. In fact, telephone companies have negotiated franchise agreements that include robust build-out requirements. In Fairfax County, Virginia, for example, a telephone company agreed to the same build-out schedule as the incumbent cable operators-full build out in 7 years.

The amendment failed by a vote of 10 to 12, and the bill reported out of Committee includes no build out requirement of any kind. If Congress is to federalize the franchising process, it must include mandatory build out requirements that guarantee that every household, regardless of income, race or location will receive the benefits of competition and new technologies over time. Universal affordable availability of the same technologies and services to every family is the necessary outcome. Our policies must deliver on that promise.

The Senate bill eliminates long-standing consumer protections under Title VI and drastically curtails the role of State and local governments in protecting their citizens.

In addition to creating a new, Federal "form agreement" for video franchising, the bill eliminates a number of provisions in current law that either reserve certain powers to franchising authorities or impose specific obligations on cable operators. Specifically, the bill: (1) eliminates requirements to provide "leased access" channels (section 612); (2) eliminates the authority of franchising authorities to review the sale of cable systems (section 617); (3) sunsets basic rate regulation immediately where a new entrant provides video service to even one household (compared to current section 623 which sunsets basic rate regulation upon a finding of "effective competition"); and (4) eliminates the authority of States and local franchising authorities to adopt and enforce their own consumer protection requirements (as is currently allowed under section 632).

Perhaps most troubling is the fact that many of these deregulatory changes are not tied to the emergence of new competition. As a result, because the Senate bill allows incumbent cable operators to obtain a "form franchise" upon the expiration of their current franchise term, such obligations under current law will expire re-

gardless of whether a new video competitor is providing service within the franchise area.

The Senate bill overrides current efforts to streamline the franchising process, including new State laws that promote deployment and ensure fair treatment to consumers.

Under the current framework in title VI of the Communications Act, a number of States have adopted procedures to promote fair competition and streamline the process for competitive entry. For example, in Hawaii, Alaska, and Vermont, existing State law expedites the entry process by giving sole responsibility for the issuance of new video franchises to a single State authority. More recently, a number of other States, including Virginia, New Jersey, and California, have enacted new laws carefully crafted to balance the interests of new providers in expediting the franchising process with the interests of consumers in ensuring that new communications capabilities will be made widely deployed throughout their community. As one analyst has noted, in just the past year franchise reform legislation has been enacted that covers roughly 60 percent of AT&T's lines and 33 percent of Verizon's lines. Unfortunately, the Senate bill would replace these constructive improvements occurring at State and local levels with a new framework that fails to protect consumers and advance the public interest.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2001

[P.L. 106–553; 114 Stat. 2762A–111]

[SEC. 632.(a)(1) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99–25, to—

[(A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels); and

[(B) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

[(2) The Federal Communications Commission may not—

[(A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A); or

[(B) extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99–25 (47 CFR 73.853),except as expressly authorized by an Act of Congress enacted after the date of the enactment of this Act.

[(3) Any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modifies its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.

[(b)(1) The Federal Communications Commission shall conduct an experimental program to test whether low-power FM radio stations will result in harmful interference to existing FM radio stations if such stations are not subject to the minimum distance separations for third-adjacent channels required by subsection (a). The Commission shall conduct such test in no more than nine FM radio markets, including urban, suburban, and rural markets, by waiving the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program. At least one of the stations shall be selected for the purpose of evaluating whether minimum distance separations for third-adjacent channels are needed for FM translator stations. The Commission may, consistent with the public interest, continue after the conclu-

sion of the experimental program to waive the minimum distance separations for third-adjacent channels for the stations that are the subject of the experimental program.

[(2) The Commission shall select an independent testing entity to conduct field tests in the markets of the stations in the experimental program under paragraph (1). Such field tests shall include—

[(A) an opportunity for the public to comment on interference; and

[(B) independent audience listening tests to determine what is objectionable and harmful interference to the average radio listener.

[(3) The Commission shall publish the results of the experimental program and field tests and afford an opportunity for the public to comment on such results. The Federal Communications Commission shall submit a report on the experimental program and field tests to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than February 1, 2001. Such report shall include—

[(A) an analysis of the experimental program and field testsand of the public comment received by the Commission;

[(B) an evaluation of the impact of the modification orelimination of minimum distance separations for third-adjacentchannels on—

[(i) listening audiences;

[(ii) incumbent FM radio broadcasters in general, and on minority and small market broadcasters in particular, including an analysis of the economic impact on such broadcasters;

[(iii) the transition to digital radio for terrestrial radio broadcasters;

[(iv) stations that provide a reading service for the blind to the public; and

[(v) FM radio translator stations;

[(C) the Commission's recommendations to the Congress to reduce or eliminate the minimum distance separations for third-adjacent channels required by subsection (a); and

[(D) such other information and recommendations as the Commission considers appropriate.]

UNITED STATES CODE

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

PART I. CRIMES

CHAPTER 110. SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

§ 2252C. Misleading words or images on the Internet

(a) IN GENERAL.—

(1) MATTER THAT IS OBSCENE.—It is unlawful for any person knowingly to embed words, symbols, or digital images into the

source code of a website with the intent to deceive another person into viewing material that is obscene.

(2) MATTER THAT IS HARMFUL TO CHILDREN.—It is unlawful for any person knowingly to embed words, symbols, or digital images into the source code of a website with the intent to deceive a minor into viewing material that is harmful to minors.

(3) IDENTIFIED MATTER NOT DECEPTIVE.—For purposes of this section, a word, symbol, or image that clearly indicates the sexual content of a website as sexual, pornographic, or similar terms shall not be considered to be misleading or deceptive.

(b) DEFINITIONS.—In this section:

(1) MATERIAL HARMFUL TO MINORS.—The term "material that is harmful to minors" means a communication consisting of nudity, sex, or excretion that, taken as a whole and with reference to its content—

(A) predominantly appeals to a prurient interest of a minor;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(C) lacks serious literary, artistic, political, or scientific value for minors.

(2) SEX.—The term "sex" means acts of masturbation, sexual intercourse, or physical contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(3) SOURCE CODE.—The term "source code" means the combination of text and other characters comprising the content, both viewable and nonviewable, of a web page, including any website publishing language, programming language, protocol, or functional content.

(c) PENALTIES.—

(1) OBSCENE MATERIAL.—Violation of subsection (a)(1) is punishable by a fine under this title, or imprisonment for not more than 2 years, or both.

(2) MATERIAL HARMFUL TO MINORS.—Violation of subsection (a)(2) is punishable by a fine under this title, or imprisonment for not more than 4 years, or both.

§ 2255. Civil remedy for personal injuries

[(a) Any minor who is**]** *(a) IN GENERAL.—Any person who, while a minor, was* a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of **[**such violation**]** *such violation, regardless of whether the injury occurred while such person was a minor,* may sue in any appropriate United States District Court and shall recover the actual damages **[**such minor**]** *such person* sustains and the cost of the suit, including a reasonable attorney's fee. **[**Any minor**]** *Any person* as described in the preceding sentence shall be deemed to have sustained damages of no less than **[**$50,000**]** *$150,000* in value.

[(b) Any action**]** *(b) STATUTE OF LIMITATIONS.—Any action* commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the

case of a person under a legal disability, not later than three years after the disability.

CRIME CONTROL ACT OF 1990

SEC. 227. REPORTING OF CHILD PORNOGRAPHY BY ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

[42 U.S.C. 13032]

(a) DEFINITIONS.—In this section—

(1) the term "electronic communication service" has the meaning given the term in section 2510 of title 18, United States Code; and

(2) the term "remote computing service" has the meaning given the term in section 2711 of title 18, United States Code.

(b) REQUIREMENTS.—

(1) DUTY TO REPORT.—Whoever, while engaged in providing an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, obtains knowledge of facts or circumstances from which a violation of section 2251, 2251A, 2252, 2252A, 2252B, or 2260 of title 18, United States Code, involving child pornography (as defined in section 2256 of that title), or a violation of section 1466A of that title, is apparent, shall, as soon as reasonably possible, make a report of such facts or circumstances to the Cyber Tip Line at the National Center for Missing and Exploited Children, which shall forward that report to a law enforcement agency or agencies designated by the Attorney General.

(2) DESIGNATION OF AGENCIES.—Not later than 180 days after the date of enactment of this section, the Attorney General shall designate the law enforcement agency or agencies to which a report shall be forwarded under paragraph (1).

(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.

(4) FAILURE TO REPORT.—A provider of electronic communication services or remote computing services described in paragraph (1) who knowingly and willfully fails to make a report under that paragraph shall be fined—

(A) in the case of an initial failure to make a report, not more than **[**$50,000;**]** *$150,000;* and

(B) in the case of any second or subsequent failure to make a report, not more than **[**$100,000.**]** *$300,000.*

(c) CIVIL LIABILITY.—No provider or user of an electronic communication service or a remote computing service to the public shall be held liable on account of any action taken in good faith to comply with or pursuant to this section.

(d) LIMITATION OF INFORMATION OR MATERIAL REQUIRED IN REPORT.—A report under subsection (b)(1) may include additional information or material developed by an electronic communication service or remote computing service, except that the Federal Government may not require the production of such information or material in that report.

(e) MONITORING NOT REQUIRED.—Nothing in this section may be construed to require a provider of electronic communication services or remote computing services to engage in the monitoring of any user, subscriber, or customer of that provider, or the content of any communication of any such person.

(f) CONDITIONS OF DISCLOSURE OF INFORMATION CONTAINED WITHIN REPORT.—

(1) IN GENERAL.—No law enforcement agency that receives a report under subsection (b)(1) shall disclose any information contained in that report, except that disclosure of such information may be made—

(A) to an attorney for the government for use in the performance of the official duties of the attorney;

(B) to such officers and employees of the law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

(C) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law; or

(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.

(2) DEFINITIONS.—In this subsection, the terms "attorney for the government" and "State" have the meanings given those terms in Rule 54 of the Federal Rules of Criminal Procedure.

INTERNET TAX FREEDOM ACT

SEC. 1101. MORATORIUM.

[47 U.S.C. 151 note]

(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following ❙taxes during the period beginning November 1, 2003, and ending November 1, 2007:❙ *taxes:*

(1) TAXES ON INTERNET ACCESS.—

(2) Multiple or discriminatory taxes on electronic commerce.

(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this title shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.

(c) LIABILITIES AND PENDING CASES.—Nothing in this title affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this title affect ongoing litigation relating to such taxes.

(d) EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any

minor and that includes any material that is harmful to minors unless such person or entity has restricted access by minors to material that is harmful to minors—

(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;

(B) by accepting a digital certificate that verifies age; or

(C) by any other reasonable measures that are feasible under available technology.

(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to making a communication for commercial purposes of material to the extent that the person is—

(A) a telecommunications carrier engaged in the provision of a telecommunications service;

(B) a person engaged in the business of providing an Internet access service;

(C) a person engaged in the business of providing an Internet information location tool; or

(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

(3) DEFINITIONS.—In this subsection:

(A) BY MEANS OF THE WORLD WIDE WEB.—The term "by means of the World Wide Web" means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

(B) COMMERCIAL PURPOSES; ENGAGED IN THE BUSINESS.—

(i) COMMERCIAL PURPOSES.—A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

(ii) ENGAGED IN THE BUSINESS.—The term "engaged in the business" means that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person's sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

(C) INTERNET.—The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(D) INTERNET ACCESS SERVICE.—The term "Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term "Internet access service" does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.

(E) INTERNET INFORMATION LOCATION TOOL.—The term "Internet information location tool" means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term "material that is harmful to minors" means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

(i) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(ii) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(G) MINOR.—The term "minor" means any person under 17 years of age.

(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS SERVICE.—The terms "telecommunications carrier" and "telecommunications service" have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(e) ADDITIONAL EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is de-

signed to permit the customer to limit access to material on the Internet that is harmful to minors.

(2) DEFINITIONS.—In this subsection:

(A) INTERNET ACCESS PROVIDER.—The term "Internet access provider" means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

(B) INTERNET ACCESS SERVICES.—The term "Internet access services" means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

(C) SCREENING SOFTWARE.—The term "screening software" means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

(3) APPLICABILITY.—Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act.

TELECOMMUNICATIONS ACT OF 1996

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

[47 U.S.C. 157 note]

(a) IN GENERAL.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) INQUIRY.—The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) LOCAL GOVERNMENT PROVISION OF ADVANCED COMMUNICATIONS CAPABILITY AND SERVICES.—No State statute, regulation, or

other State legal requirement may prohibit or have the effect of prohibiting any public provider from providing, to any person or any public or private entity, advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such public provider.

(d) SAFEGUARDS.—

(1) ANTIDISCRIMINATION.—To the extent any public provider regulates competing providers of advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such providers, the public provider shall apply its ordinances, rules, policies, and fees, including those relating to public rights-of-way, permitting, performance bonding, and reporting, without discrimination in favor of itself or any other advanced telecommunications capability provider that such public provider owns or is affiliated with, as compared to other providers of such capability or services.

(2) APPLICATION OF GENERAL LAWS.—Nothing in this subsection or subsections (e) through (g) shall exempt a public provider from any Federal or State telecommunications law or regulation that applies to all providers of—

(A) advanced telecommunications capability; or

(B) any service that utilizes the advanced telecommunications capability provided by such public provider.

(e) PUBLIC-PRIVATE PARTNERSHIPS ENCOURAGED.—Each public provider that intends to provide advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such public provider to the public shall consider the potential benefits of a public-private partnership prior to providing such capability or services.

(f) NOTICE AND OPPORTUNITY TO BID FOR THE PRIVATE SECTOR.—

(1) NOTICE AND OPPORTUNITY TO BID REQUIRED.—If a public provider decides not to initiate a project to provide advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such public provider to the public through a public-private partnership, then, before the public provider may provide such advanced telecommunications capability or any such service that utilizes the advanced telecommunications capability provided by such public provider to the public, the public provider shall—

(A)(i) publish notice of its intention in media generally available to the public in the area in which it intends to provide such capability or service; or

(ii) utilize such notice procedures as such provider already had in effect as of the date of enactment of the Community Broadband Act, if such notice has the effect of making such notice generally known to the public; and

(B) provide an opportunity for commercial enterprises to bid to provide such capability or service during the 30-day period following publication of the notice.

(2) NOTICE REQUIREMENTS.—The public provider shall include in the notice required by paragraph (1) a description of the proposed scope of the advanced telecommunications capability or any service that utilizes the advanced telecommuni-

cations capability provided by such public provider to be provided, including—

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

(B) the coverage area;

(C) service tiers and pricing; and

(D) any proposal for providing advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such public provider to low-income areas, or other demographically or geographically defined areas.

(3) PUBLIC NOTICE AND INPUT ON PROPOSED PROJECTS.—

(A) IN GENERAL.—Each public provider shall—

(i) publish notice of each proposal to provide advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such public provider to the public by a commercial enterprise under paragraph (1)(B); and

(ii) provide local citizens in the jurisdiction of that public provider and such commercial enterprises with information on the specifics of each such project, including—

(I) the cost to taxpayers, and the benefits of, the proposed public provider project; and

(II) any potential alternatives to the proposed public provider project, including any public-private partnerships.

(B) 30-DAY PERIOD.—In order to provide local citizens and commercial enterprises with an adequate opportunity to be informed, a public provider shall provide additional notice requesting that any public comments on the proposed public provider project be filed not later than 30 days after the date of publication of the notice required under subparagraph (A).

(4) APPROVAL PROCESS.—If a public provider decides to proceed with its own project to provide advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such public provider to the public despite bids by commercial enterprises received in accordance with paragraph (1)(B), such public provider shall authorize that project by whatever process typically would be utilized by such public provider to approve projects of comparable cost in the jurisdiction of such public provider.

(5) APPLICATION TO EXISTING ARRANGEMENTS AND PENDING PROPOSALS.—This subsection does not apply to—

(A) any contract or other arrangement under which a public provider is providing or upgrading advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such public provider to the public as of April 20, 2006; or

(B) any public provider proposal to provide advanced communications capability or any service that utilizes the advanced telecommunications capability provided by such public provider to the public that, as of April 20, 2006—

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

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

(iii) has been approved by referendum but is the subject of a lawsuit brought before March 1, 2006.

(g) NO RECEIPT OF FEDERAL FUNDS.—If any project to provide advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by a public provider under this section fails whether due to bankruptcy, insufficient funds, or any other reason, no Federal funds may be provided to such public provider to assist such public provider in maintaining, reviving, or renewing such project, except if such failure occurred in any jurisdiction that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(h) TEMPORARY SERVICES DURING STATES OF EMERGENCY.—Nothing in subsections (c) through (g) shall preclude a public provider from—

(1) immediately deploying a temporary advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such public provider to the public during a state of emergency declared by the President or the Governor of the State in which such public provider is located; and

(2) continuing the operation of such capability or service until the emergency situation is resolved.

[(c)] *(i)* DEFINITIONS.—For purposes of this subsection:

(1) ADVANCED TELECOMMUNICATIONS CAPABILITY.—The term "advanced telecommunications capability" is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) ELEMENTARY AND SECONDARY SCHOOLS.—The term "elementary and secondary school" means elementary and secondary schools, as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(3) PUBLIC PROVIDER.—The term "public provider" means—

(A) a State or political subdivision thereof;

(B) any agency, authority, or instrumentality of a State or political subdivision thereof;

(C) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)); or

(D) any entity that is owned, controlled, or otherwise affiliated with a State, political subdivision thereof, agency, authority, or instrumentality, or Indian tribe.

TELECOMMUNICATIONS AUTHORIZATION ACT OF 1992

[SEC. 213. TELEPHONE RATES FOR MEMBERS OF ARMED FORCES DEPLOYED ABROAD.

[47 U.S.C. 201 note]

[(a) IN GENERAL.—The Federal Communications Commission shall make efforts to reduce telephone rates for Armed Forces per-

sonnel in the following countries: Germany, Japan, Korea, Saudi Arabia, Great Britain, Italy, Philippines, Panama, Spain, Turkey, Iceland, the Netherlands, Greece, Cuba, Belgium, Portugal, Bermuda, Diego Garcia, Egypt, and Honduras.

[(b) FACTORS TO CONSIDER.—In making the efforts described in subsection (a), the Federal Communications Commission, in coordination with the Department of Defense, Department of State, and the National Telecommunications and Information Administration shall consider the cost to military personnel and their families of placing telephone calls by—

[(1) evaluating and analyzing the costs to Armed Forces personnel of such telephone calls to and from American military bases abroad;

[(2) evaluate methods of reducing the rates imposed on such calls;

[(3) determine the extent to which it is feasible for the Federal Communications Commission to encourage the carriers to adopt flexible billing procedures and policies for members of the Armed Forces and their families for telephone calls to and from the countries listed in subsection (a); and

[(4) advise executive branch agencies of methods for the United States to persuade foreign governments to reduce the surcharges that are often placed on such telephone calls.]

CHILDREN'S TELEVISION ACT OF 1990

SEC. 102. STANDARDS FOR CHILDREN'S TELEVISION PROGRAMMING.

[47 U.S.C. 303a]

(a) ESTABLISHMENT.—The Commission shall, within 30 days after the date of enactment of this Act, initiate a rulemaking proceeding to prescribe standards applicable to commercial television broadcast licensees with respect to the time devoted to commercial matter in conjunction with children's television programming. The Commission shall, within 180 days after the date of enactment of this Act, complete the rulemaking proceeding and prescribe final standards that meet the requirements of subsection (b).

(b) ADVERTISING DURATION LIMITATIONS.—Except as provided in subsection (c), the standards prescribed under subsection (a) shall include the requirement that each commercial television broadcast licensee shall limit the duration of advertising in children's television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

(c) REVIEW OF ADVERTISING DURATION LIMITATIONS; MODIFICATION.—After January 1, 1993, the Commission—

(1) may review and evaluate the advertising duration limitations required by subsection (b); and

(2) may, after notice and public comment and a demonstration of the need for modification of such limitations, modify such limitations in accordance with the public interest.

(d) DEFINITION OF "COMMERCIAL TELEVISION BROADCAST LICENSEE".—As used in this section, the term "commercial television broadcast licensee" includes [a cable operator,] *cable operators and video service providers,* as defined in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

DIGITAL TELEVISION TRANSITION AND PUBLIC SAFETY ACT OF 2005

[47 U.S.C. 309 note]

SEC. 3005. DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM.

(a) CREATION OF PROGRAM.—The Assistant Secretary shall—

(1) implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes; and

(2) make payments of not to exceed $990,000,000, in the aggregate, through fiscal year 2009 to carry out that program from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)).

(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning on October 1, 2006, such sums as may be necessary, but not to exceed $1,500,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(c) PROGRAM SPECIFICATIONS.—

(1) Limitations.—

(A) TWO-PER-HOUSEHOLD MAXIMUM.—A household may obtain coupons by making a request as required by the regulations under this section between January 1, 2008, and March 31, 2009, inclusive. The Assistant Secretary shall ensure that each requesting household receives, via the United States Postal Service, no more than two coupons.

(B) NO COMBINATIONS OF COUPONS.—Two coupons may not be used in combination toward the purchase of a single digital-to-analog converter box.

(C) DURATION.—All coupons shall expire 3 months after issuance.

(2) DISTRIBUTION OF COUPONS.—The Assistant Secretary shall expend not more than $100,000,000 on administrative expenses and shall ensure that the sum of—

(A) all administrative expenses for the program, including not more than $5,000,000 for consumer education concerning the digital television transition and the availability of the digital-to-analog converter box program; and

(B) the total maximum value of all the coupons redeemed, and issued but not expired, does not exceed $990,000,000.

(3) USE OF ADDITIONAL AMOUNT.—If the Assistant Secretary transmits to the Committee on Energy and Commerce of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate a statement certifying that the sum permitted to be expended under paragraph (2) will be insufficient to fulfill the requests for coupons from eligible households—

(A) paragraph (2) shall be applied—

(i) by substituting "$160,000,000" for "$100,000,000"; and

(ii) by substituting "$1,500,000,000" for "$990,000,000";

(B) subsection (a)(2) shall be applied by substituting "$1,500,000,000" for "$990,000,000"; and

(C) the additional amount permitted to be expended shall be available 60 days after the Assistant Secretary sends such statement.

(4) COUPON VALUE.—The value of each coupon shall be $40.

(d) DEFINITION OF DIGITAL-TO-ANALOG CONVERTER BOX.—For purposes of this section, the term "digital-to-analog converter box" means a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include *a clock, other incidental features, or* a remote control device.

SEC. 3006. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS.

(a) CREATION OF PROGRAM.—[The Assistant Secretary, in consultation with the] *The* Secretary of the Department of Homeland Security—

(1) may take such administrative action as is necessary to establish and implement a grant program to assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, reallocated public safety spectrum for radio communication; and

(2) shall make payments of not to exceed $1,000,000,000, in the aggregate, through fiscal year 2010 to carry out that program from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)).

(b) CREDIT.—The [Assistant Secretary] *Secretary of Homeland Security* may borrow from the Treasury beginning on October 1, 2006, such sums as may be necessary, but not to exceed $1,000,000,000, to implement this section. The [Assistant Secretary] *Secretary of Homeland Security* shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(c) CONDITION OF GRANTS.—In order to obtain a grant under the grant program, a public safety agency shall agree to provide, from non-Federal sources, not less than 20 percent of the costs of acquiring and deploying the interoperable communications systems funded under the grant program.

(d) INTEROPERABLE COMMUNICATIONS SYSTEM EQUIPMENT DEPLOYMENT.—

(1) IN GENERAL.—The Secretary of Homeland Security shall allocate at least 25 percent of the funds made available to carry out this section to make interoperable communications system equipment grants for equipment that can utilize, or enable

interoperability with systems or networks that can utilize, reallocated public safety spectrum.

(2) ALLOCATION OF FUNDS.—The Secretary shall allocate—

(A) a majority of the amounts allocated under paragraph (1) for distribution to public safety agencies based on the threat and risk factors used by the Secretary for the purposes of allocating discretionary grants under the heading "OFFICE FOR DOMESTIC PREPAREDNESS, STATE AND LOCAL PROGRAMS" in the Department of Homeland Security Appropriations Act, 2006; and

(B) the remainder equally to each State for distribution by the States to public safety agencies.

(3) ELIGIBILITY.—A State may not receive funds allocated to it under paragraph (2) unless it has established a statewide interoperable communications plan approved by the Secretary.

(4) USE OF FUNDS.—A public safety agency shall use any funds received under this subsection for the purchase of interoperable communications system equipment and infrastructure that is consistent with SAFECOM guidance, including any standards that may be referenced by SAFECOM guidance, and interoperable communications system equipment and infrastructure that improves interoperability that uses Internet protocol or any successor protocol.

(e) COORDINATION, PLANNING, AND TRAINING GRANT INITIATIVE.—

(1) IN GENERAL.—The Secretary of Homeland Security shall allocate at least 25 percent of the funds made available to carry out this section for interoperable emergency communications coordination, planning, and training grants. The grants shall supplement, and be in addition to, any Federal funds otherwise made available by grant or otherwise to the States for emergency coordination, planning, or training.

(2) ALLOCATION.—The Secretary shall allocate—

(A) a majority of the amounts allocated under paragraph (1) for distribution to the States based on the threat and risk factors used by the Secretary for the purposes of allocating discretionary grants under the heading "OFFICE FOR DOMESTIC PREPAREDNESS, STATE AND LOCAL PROGRAMS" in the Department of Homeland Security Appropriations Act, 2006; and

(B) the remainder equally to each State for distribution to public safety agencies.

(3) COORDINATION, PLANNING, AND TRAINING GUIDELINES.—A State shall use its emergency communication coordination, planning, and training grant to establish a statewide plan consistent with the State communications interoperability planning methodology developed by the SAFECOM program within the Department of Homeland Security or a regional plan established by a regional planning agency consistent with this section and to establish training programs designed to ensure effective implementation of coordination and interoperability plans. In establishing the statewide plan, the Governor or the Governor's designee shall consult with the Secretary of Homeland Security or the Secretary of Homeland Security's designee.

A State shall submit its statewide plan to the Federal Communications Commission and the Secretary of Homeland Security.

(4) MEDICAL SERVICES.—As part of its statewide plan, a State shall ensure that—

(A) there are effective 2-way communications and information sharing between medical services and other emergency response entities, including communications among key strategic emergency responders, emergency medical care facilities, and Federal, State, and local authorities in the event of a national, regional, or other large-scale emergency, and redundancy in the event of a failure of the primary communications systems; and

(B) medical emergency responses are integrated into all planning and decision-making practices for emergency response.

(5) STATE-SPECIFIC COORDINATION, PLANNING, AND TRAINING.—Grants under this section shall be available for emergencies and disasters, such as hurricanes, forest fires, and mining accidents.

(f) STRATEGIC TECHNOLOGY RESERVES INITIATIVE.—

(1) IN GENERAL.—The Secretary of Homeland Security shall allocate up to 25 percent of the funds made available to carry out this section to establish and implement a strategic technology reserve to pre-position or secure interoperable communications systems in advance for immediate deployment in an emergency or major disaster (as defined in section 102(2) of Public Law 93–288 (42 U.S.C. 5122)). In carrying out this paragraph, the Secretary shall take into consideration the continuing technological evolution of communications technologies and devices, with its implicit risk of obsolescence, and ensure that, to the maximum extent feasible, a substantial part of the reserve involves prenegotiated contracts and other arrangements for rapid deployment of equipment, supplies, and systems rather than the warehousing or storage of equipment and supplies currently available at the time the reserve is established.

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

(A) be capable of re-establishing communications when existing infrastructure is damaged or destroyed in an emergency or a major disaster;

(B) include appropriate current, widely-used equipment, such as Land Mobile Radio Systems, cellular telephones, satellite equipment, Cells-On-Wheels, Cells-On-Light-Trucks, or other self-contained mobile cell sites that can be towed, backup batteries, generators, fuel, and computers;

(C) include equipment on hand for the Governor of each State, key emergency response officials, and appropriate State or local personnel;

(D) include contracts (including prenegotiated contracts) for rapid delivery of the most current technology available from commercial sources; and

(E) include arrangements for training to ensure that personnel are familiar with the operation of the equipment and devices to be delivered pursuant to such contracts.

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

(4) CONSULTATION.—In developing the reserve, the Secretary shall seek advice from the Secretary of Defense, as well as national public safety organizations, emergency managers, State, local, and tribal governments, and commercial providers of such systems and equipment.

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

(A) a portion of the reserve's funds for block grants to States to enable each State to establish a strategic technology reserve within its borders in a secure location to allow immediate deployment; and

(B) a portion of the reserve's funds for regional Federal strategic technology reserves to facilitate any Federal response when necessary, to be held in each of the Federal Emergency Management Agency's regional offices, including Boston, Massachusetts (Region 1), New York, New York (Region 2), Philadelphia, Pennsylvania (Region 3), Atlanta, Georgia (Region 4), Chicago, Illinois (Region 5), Denton, Texas (Region 6), Kansas City, Missouri (Region 7), Denver, Colorado (Region 8), Oakland, California (Region 9), Bothell, Washington (Region 10), and each of the noncontiguous States for immediate deployment.

(g) CONSENSUS STANDARDS; APPLICATIONS.—

(1) CONSENSUS STANDARDS.—In carrying out this section, the Secretary of Homeland Security shall identify, and if necessary encourage the development and implementation of, consensus standards for interoperable communications systems to the greatest extent practicable.

(2) APPLICATIONS.—To be eligible for assistance under the programs established in this section, each State shall submit an application, at such time, in such form, and containing such information as the Secretary may require, including—

(A) a detailed explanation of how assistance received under the program would be used to improve local communications interoperability and ensure interoperability with other appropriate public safety agencies in an emergency or a major disaster; and

(B) assurance that the equipment and system would—

(i) be compatible with the communications architecture developed under section 7303(a)(1)(E) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(a)(1)(E));

(ii) meet any voluntary consensus standards developed under section 7303(a)(1)(D) of that Act (6 U.S.C. 194(a)(1)(D); and

(iii) be compatible with the common grant guidance established under section 7303(a)(1)(H) of that Act (6 U.S.C. 194(a)(1)(H)).

(h) DEADLINE FOR IMPLEMENTATION REGULATIONS.—Within 90 days after the date of enactment of the Advanced Telecommunications and Opportunities Reform Act, the Secretary, in consultation

with the Federal Communications Commission, shall promulgate regulations for the implementation of subsections (d) through (f) of this section.

[(d)] *(i)* DEFINITIONS.—For purposes of this section:

(1) PUBLIC SAFETY AGENCY.—The term "public safety agency" means any State, local, or tribal government entity, or non-governmental organization authorized by such entity, whose sole or principal purpose is to protect the safety of life, health, or property.

(2) INTEROPERABLE COMMUNICATIONS SYSTEMS.—The term "interoperable communications systems" means communications systems which enable public safety agencies to share information amongst local, State, Federal, and tribal public safety agencies in the same area via voice or data signals.

(3) REALLOCATED PUBLIC SAFETY SPECTRUM.—The term "reallocated public safety spectrum" means the bands of spectrum located at 764-776 megahertz and 794-806 megahertz, inclusive.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION ORGANIZATION ACT

SEC. 158. COORDINATION OF E–911 IMPLEMENTATION.

[47 U.S.C. 942]

(a) E–911 IMPLEMENTATION COORDINATION OFFICE.—

(1) ESTABLISHMENT.—The Assistant Secretary and the Administrator of the National Highway Traffic Safety Administration shall—

(A) establish a joint program to facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E–911 [services;] *services and services related to the migration to an IP-enabled emergency network that provides E–911 services;* and

(B) create an E–911 Implementation Coordination Office to implement the provisions of this section.

(2) MANAGEMENT PLAN.—The Assistant Secretary and the Administrator shall jointly develop a management plan for the program established under this section. Such plan shall include the organizational structure and funding profiles for the 5-year duration of the program. The Assistant Secretary and the Administrator shall, within 90 days after the date of enactment of this Act, submit the management plan to the Committees on Energy and Commerce and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

(3) PURPOSE OF OFFICE.—The Office shall—

(A) take actions, in concert with coordinators designated in accordance with subsection (b)(3)(A)(ii), to improve such coordination and communication;

(B) develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of E–911 services;

(C) advise and assist eligible entities in the preparation of implementation plans required under subsection (b)(3)(A)(iii);

(D) receive, review, and recommend the approval or disapproval of applications for grants under subsection (b); and

(E) oversee the use of funds provided by such grants in fulfilling such implementation plans.

(4) REPORTS.—The Assistant Secretary and the Administrator shall provide a joint annual report to Congress by the first day of October of each year on the activities of the Office to improve coordination and communication with respect to the implementation of E–911 services.

(b) PHASE II E–911 IMPLEMENTATION GRANTS.—

(1) MATCHING GRANTS.—The Assistant Secretary and the Administrator, after consultation with the Secretary of Homeland Security and the Chairman of the Federal Communications Commission, and acting through the Office, shall provide grants to eligible entities for the implementation and operation of Phase II E–911 services.

(2) MATCHING REQUIREMENT.—The Federal share of the cost of a project eligible for a grant under this section shall not exceed 50 percent. The non-Federal share of the cost shall be provided from non-Federal sources.

(3) COORDINATION REQUIRED.—In providing grants under paragraph (1), the Assistant Secretary and the Administrator shall require an eligible entity to certify in its application that—

(A) in the case of an eligible entity that is a State government, the entity—

(i) has coordinated its application with the public safety answering points (as such term is defined in section 222(h)(4) of the Communications Act of 1934) located within the jurisdiction of such entity;

(ii) has designated a single officer or governmental body of the entity to serve as the coordinator of implementation of E–911 services, except that such designation need not vest such coordinator with direct legal authority to implement E–911 services or manage emergency communications operations;

(iii) has established a plan for the coordination and implementation of E–911 services; and

(iv) has integrated telecommunications services involved in the implementation and delivery of phase II E–911 services; or

(B) in the case of an eligible entity that is not a State, the entity has complied with clauses (i), (iii), and (iv) of subparagraph (A), and the State in which it is located has complied with clause (ii) of such subparagraph.

(4) CRITERIA.—The Assistant Secretary and the Administrator shall jointly issue regulations within 180 days after the

date of enactment of the ENHANCE 911 Act of 2004, after a public comment period of not less than 60 days, prescribing the criteria for selection for grants under this section, and shall update such regulations as necessary. The criteria shall include performance requirements and a timeline for completion of any project to be financed by a grant under this section.

(c) DIVERSION OF E–911 CHARGES.—

(1) DESIGNATED E–911 CHARGES.—For the purposes of this subsection, the term "designated E–911 charges" means any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve E–911 services.

(2) CERTIFICATION.—Each applicant for a matching grant under this section shall certify to the Assistant Secretary and the Administrator at the time of application, and each applicant that receives such a grant shall certify to the Assistant Secretary and the Administrator annually thereafter during any period of time during which the funds from the grant are available to the applicant, that no portion of any designated E–911 charges imposed by a State or other taxing jurisdiction within which the applicant is located are being obligated or expended for any purpose other than the purposes for which such charges are designated or presented during the period beginning 180 days immediately preceding the date of the application and continuing through the period of time during which the funds from the grant are available to the applicant.

(3) CONDITION OF GRANT.—Each applicant for a grant under this section shall agree, as a condition of receipt of the grant, that if the State or other taxing jurisdiction within which the applicant is located, during any period of time during which the funds from the grant are available to the applicant, obligates or expends designated E–911 charges for any purpose other than the purposes for which such charges are designated or presented, all of the funds from such grant shall be returned to the Office.

(4) PENALTY FOR PROVIDING FALSE INFORMATION.—Any applicant that provides a certification under paragraph (1) knowing that the information provided in the certification was false shall—

(A) not be eligible to receive the grant under subsection (b);

(B) return any grant awarded under subsection (b) during the time that the certification was not valid; and

(C) not be eligible to receive any subsequent grants under subsection (b).

(d) AUTHORIZATION; TERMINATION.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the Department of Transportation, for the purposes of grants under the joint program operated under this section with the Department of Commerce, not more than $250,000,000 for each of the fiscal years 2005 through 2009, not more than 5 percent of which for any fiscal year may be obligated or expended for administrative costs.

(2) TERMINATION.—The provisions of this section shall cease to be effective on October 1, 2009.

(e) DEFINITIONS.—As used in this section:

(1) OFFICE.—The term "Office" means the E–911 Implementation Coordination Office.

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the National Highway Traffic Safety Administration.

(3) ELIGIBLE ENTITY.—

(A) IN GENERAL.—The term "eligible entity" means a State or local government or a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))).

(B) INSTRUMENTALITIES.—Such term includes public authorities, boards, commissions, and similar bodies created by one or more eligible entities described in subparagraph (A) to provide E–911 services.

(C) EXCEPTION.—Such term does not include any entity that has failed to submit the most recently required certification under subsection (c) within 30 days after the date on which such certification is due.

(4) E–911 SERVICES.—The term "E–911 services" means both phase I and phase II enhanced 911 services, as described in section 20.18 of the Commission's regulations (47 C.F.R. 20.18), as in effect on the date of enactment of the ENHANCE 911 Act of 2004, or as subsequently revised by the Federal Communications Commission.

(5) PHASE II E–911 SERVICES.—The term "phase II E–911 services" means only phase II enhanced 911 services, as described in such section 20.18 (47 C.F.R. 20.18), as in effect on such date, or as subsequently revised by the Federal Communications Commission.

(6) STATE.—The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

* * * * * * *

SEC. 5. COMMISSION.

[47 U.S.C. 155]

(a) CHAIRMAN; DUTIES; VACANCY.—The member of the Commission designated by the President as chairman shall be the chief executive officer of the Commission. It shall be his duty to preside at all meetings and sessions of the Commission, to represent the Commission in all matters relating to legislation and legislative reports, except that any commissioner may present his own or minority views or supplemental reports, to represent the Commission in all matters requiring conferences or communications with other governmental officers, departments or agencies, and generally to coordinate and organize the work of the Commission in such manner

as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission. In the case of a vacancy in the office of the chairman of the Commission, or the absence or inability of the chairman to serve, the Commission may temporarily designate one of its members to act as chairman until the cause or circumstance requiring such designation shall have been eliminated or corrected.

(b) ORGANIZATION OF STAFF.—From time to time as the Commission may find necessary, the Commission shall organize its staff into (1) integrated bureaus, to function on the basis of the Commission's principal workload operations, and (2) such other divisional organizations as the Commission may deem necessary. Each such integrated bureau shall include such legal, engineering, accounting, administrative, clerical, and other personnel as the Commission may determine to be necessary to perform its functions.

(c) DELEGATION OF FUNCTIONS; EXCEPTIONS TO INITIAL ORDERS; FORCE, EFFECT AND ENFORCEMENT OF ORDERS; ADMINISTRATIVE AND JUDICIAL REVIEW; QUALIFICATIONS AND COMPENSATION OF DELEGATES; ASSIGNMENT OF CASES; SEPARATION OF REVIEW AND INVESTIGATIVE OR PROSECUTING FUNCTIONS; SECRETARY; SEAL.—

(1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions (except functions granted to the Commission by this paragraph and by paragraphs (4), (5), and (6) of this subsection and except any action referred to in sections 204(a)(2), 208(b), and 405(b)) to a panel of commissioners, an individual commissioner, and employee board, or an individual employee, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter; except that in delegating review functions to employees in cases of adjudication (as defined in the Administrative Procedure Act), the delegation in any such case may be made only to an employee board consisting of two or more employees referred to in paragraph (8). Any such rule or order may be adopted, amended, or rescinded only by a vote of a majority of the members of the Commission then holding office. Except for cases involving the authorization of service in the instructional television fixed service, or as otherwise provided in this Act, nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in paragraph (2) or (3) of section 556(b) of title 5, United States Code, of any hearing to which such section applies.

(2) As used in this subsection (d) the term "order, decision, report, or action" does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b).

(3) Any order, decision, report, or action made or taken pursuant to any such delegation, unless reviewed as provided in paragraph (4), shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission.

(4) Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or action made or taken pursuant to any delegation under paragraph (1).

(5) In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. No such application for review shall rely on questions of fact or law upon which the panel of commissioners, individual commissioner, employee board, or individual employee has been afforded no opportunity to pass.

(6) If the Commission grants the application for review, it may affirm, modify, or set aside the order, decision, report, or action, or it may order a rehearing upon such order, decision, report, or action in accordance with section 405.

(7) The filing of an application for review under this subsection shall be a condition precedent to judicial review of any order, decision, report, or action made or taken pursuant to a delegation under paragraph (1). The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all applications for review filed in any case.

(8) The employees to whom the Commission may delegate review functions in any case of adjudication (as defined in the Administrative Procedure Act) shall be qualified, by reason of their training, experience, and competence, to perform such review functions, and shall perform no duties inconsistent with such review functions. Such employees shall be in a grade classification or salary level commensurate with their important duties, and in no event less than the grade classification or salary level of the employee or employees whose actions are to be reviewed. In the performance of such review functions such employees shall be assigned to cases in rotation so far as practicable and shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency.

(9) The secretary and seal of the Commission shall be the secretary and seal of each panel of the Commission, each individual commissioner, and each employee board or individual employee exercising functions delegated pursuant to paragraph (1) of this subsection.

(d) MEETINGS.—Meetings of the Commission shall be held at regular intervals, not less frequently than once each calendar month, at which times the functioning of the Commission and the handling of its work load shall be reviewed and such orders shall be entered and other action taken as may be necessary or appropriate to expe-

dite the prompt and orderly conduct of the business of the Commission with the objective of rendering a final decision (1) within three months from the date of filing in all original application, renewal, and transfer cases in which it will not be necessary to hold a hearing and (2) within six months from the final date of the hearing in all hearing cases.

(e) MANAGING DIRECTOR; APPOINTMENT, FUNCTIONS, PAY.—The Commission shall have a Managing Director who shall be appointed by the Chairman subject to the approval of the Commission. The Managing Director, under the supervision and direction of the Chairman, shall perform such administrative and executive functions as the Chairman shall delegate. The Managing Director shall be paid at a rate equal to the rate then payable for level V of the Executive Schedule.

(f) MEETINGS.—

(1) ATTENDANCE REQUIRED.—Notwithstanding 552b of title 5, United States Code, and section 4(h) of this Act, the Commission may conduct a meeting that is not open to the public if the meeting is attended by—

(A) all members of the Commission; or

(B) at least 1 member of the political party whose members are in the minority.

(2) VOTING PROHIBITED.—The Commission may not vote or make any final decision on any matter pending before it in a meeting that is not open to the public, unless—

(A) otherwise authorized by section 552b(b) of title 5, United States Code; or

(B) the Commission has moved its operations outside Washington, D.C., pursuant to a Continuity of Operations Plan.

(3) PUBLICATION OF SUMMARY.—If the Commission conducts a meeting that is not open to the public under this section, the Commission shall promptly publish an executive summary describing the matters discussed at that meeting after the meeting ends, except for such matters as the Commission determines may be withheld under section 552b(c) of title 5, United States Code. This paragraph does not apply to a meeting described in paragraph (4).

(4) QUORUM UNNECESSARY FOR CERTAIN MEETINGS.—Neither section 552b of title 5, United States Code, nor paragraph (1) of this subsection applies to—

(A) a meeting of 3 or more members of the Commission with the President, any person employed by the Office of the President, any official of a Federal, State, or local agency, a Member of Congress or his staff;

(B) the attendance, by 3 or more members of the Commission, at a forum or conference to discuss general communications issues; or

(C) a meeting of 3 or more members of the Commission when the Continuity of Operations Plan is in effect and the Commission is operating under the terms of that Plan.

(5) SAVINGS CLAUSE.—Nothing in this subsection shall be construed to prohibit the Commission from doing anything authorized by section 552b of title 5, United States Code.

SEC. 10. COMPETITION IN PROVISION OF TELECOMMUNICATIONS SERVICE.

[47 U.S.C. 160]

(a) REGULATORY FLEXIBILITY.—Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

(b) COMPETITIVE EFFECT TO BE WEIGHED.—In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

(c) PETITION FOR FORBEARANCE.—Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers. Any such petition shall be [deemed granted] *voted on by the Commission* if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a). The Commission may grant or deny a petition in whole or in part *by majority vote* and shall explain its decision in writing.

(d) LIMITATION.—Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.

(e) STATE ENFORCEMENT AFTER COMMISSION FORBEARANCE.—A State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying under subsection (a).

TITLE II—COMMON CARRIERS

PART I. COMMON CARRIER REGULATION

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SEC. 214. EXTENSION OF LINES OR DISCONTINUANCE OF SERVICE; CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

[47 U.S.C. 214]

(a) EXCEPTIONS; TEMPORARY OR EMERGENCY SERVICE OR DISCONTINUANCE OF SERVICE; CHANGES IN PLANT, OPERATION OR EQUIPMENT.—No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: Provided, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 of this Act: Provided further, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels: Provided, however, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

(b) NOTIFICATION OF SECRETARY OF DEFENSE, SECRETARY OF STATE, AND STATE GOVERNOR.—Upon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, extended, acquired, or operated, or in which such discontinuance, reduction, or impairment of service is proposed, with

the right to those notified to be heard; and the Commission may require such published notice as it shall determine.

(c) APPROVAL OR DISAPPROVAL; INJUNCTION.—The Commission shall have power to issue such certificate as applied for, or to refuse to issue it, or to issue it for a portion or portions of a line, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, extension, acquisition, operation, or discontinuance, reduction, or impairment of service covered thereby. Any construction, extension, acquisition, operation, discontinuance, reduction, or impairment of service contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.

(d) ORDER OF COMMISSION; HEARING; PENALTY.—The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier and to extend its line or to establish a public office; but no such authorization or order shall be made unless the Commission finds, as to such provision of facilities, as to such establishment of public offices, or as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall forfeit to the United States $1,200 for each day during which such refusal or neglect continues.

(e) PROVISION OF UNIVERSAL SERVICE.—

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.—A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.—A State commission shall upon its own motion or upon request designate a common carrier that meets the require-

ments of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR UNSERVED AREAS.—If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

(4) RELINQUISHMENT OF UNIVERSAL SERVICE.—A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall establish a time, not to exceed one year after the State commission (or the Commission in the case of a com-

mon carrier designated under paragraph (6)) approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) SERVICE AREA DEFINED.—The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

(6) COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION.—In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

(7) ELIGIBILITY GUIDELINES.—

(A) IN GENERAL.—A common carrier may not be designated as a new eligible communications carrier unless it—

(i) is committed to providing service throughout its proposed designated service area, using its own facilities or a combination of facilities and resale of another carrier's facilities, to all customers making a reasonable request for service;

(ii) has certified to the State commission or the Commission that it will provide service on a timely basis to requesting customers within its service area, if service can be provided at reasonable cost;

(iii) has submitted a plan to the State commission or the Commission that describes with specificity proposed improvements or upgrades to its network that will be accomplished with high-cost support over the first 2 years following its designation as an eligible communications carrier;

(iv) has demonstrated to the State commission or the Commission its ability to remain functional in emergency situations, including a demonstration that it has

a reasonable amount of back-up power to ensure functionality without an external power source;

(v) is committed to following applicable consumer protection and service quality standards; and

(vi) has complied with annual reporting requirements established by the Commission or by State Commissions for all carriers receiving universal service support to ensure that such support is used for the provision, maintenance, and upgrading of the facilities for which support is intended.

(B) APPLICATION LIMITED TO POST DATE-OF-ENACTMENT DESIGNATIONS.—Subparagraph (A) applies only to an entity designated as an eligible communications carrier after the date of enactment of the Internet and Universal Service Act of 2006.

(C) 6-MONTH DESIGNATION DEADLINE.—Beginning 6 months after the date of enactment of the Internet and Universal Service Act of 2006, a State commission or the Commission shall grant or deny an application for designation as an eligible communications carrier within 6 months after the date on which it receives a complete application.

(D) ELIGIBLE COMMUNICATIONS CARRIER.—In this paragraph, the term "eligible communications carrier" means an entity designated under paragraph (2), (3), or (6) of this subsection. Any reference to eligible telecommunications carrier in this section or in section 254 refers also to an eligible communications carrier.

(8) PRIMARY LINE.—In implementing the requirements of this Act with respect to the distribution and use of Federal universal service support, the Commission shall not limit such distribution and use to a single connection or primary line, and all residential and business lines served by an eligible communications carrier shall be eligible for Federal universal service support.

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SEC. 227. RESTRICTIONS ON USE OF TELEPHONE EQUIPMENT.

[47 U.S.C. 227]

(a) DEFINITIONS.—As used in this section—

(1) The term "automatic telephone dialing system" means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

(2) The term "established business relationship", for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—

(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G).

(3) The term "telephone facsimile machine" means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(4) The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(5) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(b) RESTRICTIONS ON USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(i) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

(C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless—

(i) the unsolicited advertisement is from a sender with an established business relationship with the recipient;

(ii) the sender obtained the number of the telephone facsimile machine through—

(I) the voluntary communication of such number, within the context of such established business relationship, from the recipient of the unsolicited advertisement, or

(II) a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution,except that this clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before the date of enactment of the Junk Fax Prevention Act of 2005 if the sender possessed the facsimile machine number of the recipient before such date of enactment; and

(iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D),

except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(2) REGULATIONS; EXEMPTIONS AND OTHER PROVISIONS.—The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission—

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent;

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines—

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement;

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the

interest of the privacy rights this section is intended to protect;

(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if—

(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

(iii) the notice sets forth the requirements for a request under subparagraph (E);

(iv) the notice includes—

(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

(vi) the notice complies with the requirements of subsection (d);

(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to

send such advertisements to such person at such telephone facsimile machine;

(F) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(iii), except that the Commission may take action under this subparagraph only—

(i) by regulation issued after public notice and opportunity for public comment; and

(ii) if the Commission determines that such notice required by paragraph (1)(C)(iii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements; and

(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall—

(I) determine whether the existence of the exception under paragraph (1)(C) relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

(II) determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

(III) evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

(IV) determine whether with respect to small businesses, the costs would not be unduly burdensome; and

(ii) may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 3-month period that begins on the date of the enactment of the Junk Fax Prevention Act of 2005.

(3) PRIVATE RIGHT OF ACTION.—A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(c) PROTECTION OF SUBSCRIBER PRIVACY RIGHTS.—

(1) RULEMAKING PROCEEDING REQUIRED.—Within 120 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall—

(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific 'do not call' systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

(B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

(C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

(2) REGULATIONS.—Not later than 9 months after the date of enactment of this section, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

(3) USE OF DATABASE PERMITTED.—The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts

thereof available for purchase. If the Commission determines to require such a database, such regulations shall—

(A) specify a method by which the Commission will select an entity to administer such database;

(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;

(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

(D) specify the methods by which such objections shall be collected and added to the database;

(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;

(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;

(H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;

(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;

(J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

(L) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

(4) CONSIDERATIONS REQUIRED FOR USE OF DATABASE METHOD.—If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall—

(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and—

(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

(ii) reflect the relative costs of providing such lists on paper or electronic media; and

(iii) not place an unreasonable financial burden on small businesses; and

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

(5) PRIVATE RIGHT OF ACTION.—A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State—

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater, or

(C) both such actions.It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(6) RELATION TO SUBSECTION (b).—The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b).

(d) TECHNICAL AND PROCEDURAL STANDARDS.—

(1) PROHIBITION.—It shall be unlawful for any person within the United States—

(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed

under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

(2) TELEPHONE FACSIMILE MACHINES.—The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after the date of enactment of this section clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual.

(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS.—The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual; and

(B) any such system will automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

(e) PROHIBITION ON PROVISION OF INACCURATE CALLER IDENTIFICATION INFORMATION.—

(1) IN GENERAL.—It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to transmit misleading or inaccurate caller identification information, unless such transmission is exempted pursuant to paragraph (3)(B).

(2) PROTECTION FOR BLOCKING CALLER IDENTIFICATION INFORMATION.—Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

(3) REGULATIONS.—

(A) IN GENERAL.—Not later than 6 months after the enactment of the Truth in Caller ID Act of 2006, the Commis-

sion shall prescribe regulations to implement this subsection.

(B) CONTENT OF REGULATIONS.—

(i) IN GENERAL.—The regulations required under subparagraph (A) shall include such exemptions from the prohibition under paragraph (1) as the Commission determines appropriate.

(ii) SPECIFIC EXEMPTION FOR LAW ENFORCEMENT AGENCIES, NATIONAL SECURITY ACTIVITIES, OR COURT ORDERS.—The regulations required under subparagraph (A) shall exempt from the prohibition under paragraph (1) transmissions in connection with—

(I) any authorized law enforcement or national security activity of an agency of the United States, a State, or a political subdivision of a State; or

(II) a court order that specifically authorizes the use of caller identification manipulation.

(4) REPORT.—Not later than 6 months after the enactment of the Truth in Caller ID Act of 2006, the Commission shall report to Congress whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications service or IP-enabled voice service.

(5) PENALTIES.—

(A) CIVIL FORFEITURE.—

(i) IN GENERAL.—Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b), to have violated this subsection shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition to any other penalty provided for by this Act. The amount of the forfeiture penalty determined under this paragraph shall not exceed $10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act.

(ii) RECOVERY.—Any forfeiture penalty determined under clause (i) shall be recoverable pursuant to section 504(a).

(iii) PROCEDURE.—No forfeiture liability shall be determined under clause (i) against any person unless such person receives the notice required by section 503(b)(3) or section 503(b)(4).

(iv) 2-YEAR STATUTE OF LIMITATIONS.—No forfeiture penalty shall be determined or imposed against any person under clause (i) if the violation charged occurred more than 2 years prior to the date of issuance of the required notice or notice or apparent liability.

(B) CRIMINAL FINE.—Any person who willfully and knowingly violates this subsection shall upon conviction thereof be fined not more than $10,000 for each violation, or 3

times that amount for each day of a continuing violation, in lieu of the fine provided by section 501 for such a violation. This subparagraph does not supersede the provisions of section 501 relating to imprisonment or the imposition of a penalty of both fine and imprisonment.

(6) ENFORCEMENT BY STATES.—

(A) IN GENERAL.—The chief legal officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as parens patriae, on behalf of the residents of that State in an appropriate district court of the United States to enforce this subsection or to impose the civil penalties for violation of this subsection, whenever the chief legal officer or other State officer has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this subsection or a regulation under this subsection.

(B) NOTICE.—The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under subparagraph (A) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(C) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subparagraph (B), the Commission may intervene in such civil action and upon intervening—

(i) be heard on all matters arising in such civil action; and

(ii) file petitions for appeal of a decision in such civil action.

(D) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this paragraph shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(E) VENUE; SERVICE OF PROCESS.—

(i) VENUE.—An action brought under subparagraph (A) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(ii) SERVICE OF PROCESS.—In an action brought under subparagraph (A)—

(I) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(II) a person who participated in an alleged violation that is being litigated in the civil action may

be joined in the civil action without regard to the residence of the person.

(F) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted an enforcement action or proceeding for violation of this subsection, the chief legal officer or other State officer of the State in which the violation occurred may not bring an action under this section during the pendency of the proceeding against any person with respect to whom the Commission has instituted the proceeding.

(7) DEFINITIONS.—For purposes of this subsection:

(A) CALLER IDENTIFICATION INFORMATION.—The term "caller identification information" means information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service.

(B) CALLER IDENTIFICATION SERVICE.—The term "caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service. Such term includes automatic number identification services.

(C) IP-ENABLED VOICE SERVICE.—The term "IP-enabled voice service" means the provision of real-time 2-way voice communications offered to the public, or such classes of users as to be effectively available to the public, transmitted through customer premises equipment using Internet protocol, or a successor protocol, for a fee (whether part of a bundle of services or separately) with interconnection capability such that the service can originate traffic to, or terminate traffic from, the public switched telephone network.

(8) LIMITATION.—Notwithstanding any other provision of this section, subsection (f) shall not apply to this subsection or to the regulations under this subsection.

[(e)] *(f)* EFFECT ON STATE LAW.—

(1) STATE LAW NOT PREEMPTED.—Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

(B) the use of automatic telephone dialing systems;

(C) the use of artificial or prerecorded voice messages; or

(D) the making of telephone solicitations.

(2) STATE USE OF DATABASES.—If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not

include the part of such single national database that relates to such State.

[(f)] *(g)* ACTIONS BY STATES.—

(1) AUTHORITY OF STATES.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) RIGHTS OF COMMISSION.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

(5) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection shall be construed to prohibit an au-

thorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(7) LIMITATION.—Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

(8) DEFINITION.—As used in this subsection, the term "attorney general" means the chief legal officer of a State.

[(g)] *(h)* JUNK FAX ENFORCEMENT REPORT.—The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—

(1) the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;

(2) the number of citations issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(3) the number of notices of apparent liability issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(4) for each notice referred to in paragraph (3)—

(A) the amount of the proposed forfeiture penalty involved;

(B) the person to whom the notice was issued;

(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(D) the status of the proceeding;

(5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(6) for each forfeiture order referred to in paragraph (5)—

(A) the amount of the penalty imposed by the order;

(B) the person to whom the order was issued;

(C) whether the forfeiture penalty has been paid; and

(D) the amount paid;

(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

(8) for each case in which the Commission referred such an order for recovery—

(A) the number of days from the date the Commission issued such order to the date of such referral;

(B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and

(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.

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PART II. DEVELOPMENT OF COMPETITIVE MARKETS

SEC. 251. INTERCONNECTION.

[47 U.S.C. 251]

(a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.—Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS.—Each local exchange carrier has the following duties:

(1) RESALE.—The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) NUMBER PORTABILITY.—The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) DIALING PARITY.—The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) ACCESS TO RIGHTS-OF-WAY.—The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

(5) RECIPROCAL COMPENSATION.—The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.—In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE.—The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) INTERCONNECTION.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

(3) UNBUNDLED ACCESS.—The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) RESALE.—The duty—

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) NOTICE OF CHANGES.—The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) COLLOCATION.—The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) IMPLEMENTATION.—

(1) IN GENERAL.—Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) ACCESS STANDARDS.—In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether—

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) PRESERVATION OF STATE ACCESS REGULATIONS.—In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) NUMBERING ADMINISTRATION.—

(1) COMMISSION AUTHORITY AND JURISDICTION.—The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) COSTS.—The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) UNIVERSAL EMERGENCY TELEPHONE NUMBER.—The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9–1–1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9–1–1 is not in use as an emergency telephone number on the date of enactment of the Wireless Communications and Public Safety Act of 1999.

(f) EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS.—

(1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES.—

(A) EXEMPTION.—[Subsection] *Except as provided in subparagraph (B), subsection* (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for [interconnection, services, or network elements,] *services or network elements* and (ii) the State commission determines [(under subparagraph (B))] *(under subparagraph (C))* that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) CERTAIN CARRIERS.—Subsection (c) (other than paragraphs (1) and (2) thereof) of this section shall not apply to a rural telephone company in Alaska with fewer than 10 access lines per square mile installed in the aggregate in its service area (as defined in section 214(e)(5)).

(C) INTERCONNECTION.—Notwithstanding subparagraphs (A) and (D), paragraphs (1) and (2) of subsection (c) of this section shall not apply to a rural telephone company until such company has received a bona fide request for interconnection.

[(B)] *(D)* STATE TERMINATION OF EXEMPTION AND IMPLEMENTATION SCHEDULE.—The party making a bona fide request of a rural telephone company for [interconnection, services, or network elements] *services or network elements* shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

[(C) LIMITATION ON EXEMPTION.—The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on the date of enactment of the Telecommunications Act of 1996.]

(2) SUSPENSIONS AND MODIFICATIONS FOR RURAL CARRIERS.—A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) *(other than paragraphs (1) and (2) of subsection (c))* to telephone exchange service facilities specified in

such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary—

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION REQUIREMENTS.—On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER.—

(1) DEFINITION.—For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B) (i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

(2) TREATMENT OF COMPARABLE CARRIERS AS INCUMBENTS.—The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

(A) such carrier occupies a position in the market for telephone exchange service within an area that is com-

parable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) SAVINGS PROVISION.—Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.

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SEC. 254. UNIVERSAL SERVICE.

[47 U.S.C. 254]

(a) PROCEDURES TO REVIEW UNIVERSAL SERVICE REQUIREMENTS.

(1) FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE.—Within one month after the date of enactment of the Telecommunications Act of 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410(c), one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates. The Joint Board shall, after notice and opportunity for public comment, make its recommendations to the Commission 9 months after the date of enactment of the Telecommunications Act of 1996.

(2) COMMISSION ACTION.—The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after the date of enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

(b) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES.—Quality services should be available at just, reasonable, and affordable rates.

(2) ACCESS TO ADVANCED SERVICES.—Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS.—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including

interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.—All providers of [telecommunications services] *communications services (as defined in subsection (d)(6)(B)* should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.—There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.—Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) COMPETITIVE NEUTRALITY.—Universal service support mechanisms and rules should be competitively neutral. In this context, competitively neutral means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.

[(7)] *(8)* ADDITIONAL PRINCIPLES.—Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

(c) DEFINITION.—

(1) IN GENERAL.—Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

(2) ALTERATIONS AND MODIFICATIONS.—The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.

(3) SPECIAL SERVICES.—In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support

mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).

[(d) TELECOMMUNICATIONS CARRIER CONTRIBUTION.—Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.]

(d) UNIVERSAL SERVICE SUPPORT CONTRIBUTIONS.—

(1) CONTRIBUTION MECHANISM.—

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

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

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

(ii) specific, predictable, and sufficient to sustain the funding of networks used to preserve and advance universal service; and

(iii) applied in such a manner that no methodology results in a communications services provider being required to contribute more than once to support Federal universal service for the same transaction, activity, or service.

(C) ADJUSTMENTS.—The Commission shall adjust the contribution for communication service providers for their low-call volume, non-business customers.

(2) EXEMPTIONS.—The Commission may exempt a communications service provider or any class of communications service providers from the requirements of this subsection in the following circumstances:

(A) The services of such a provider are limited to such an extent that the level of its contributions would be de minimis.

(B) The communications service is provided pursuant to the Commission's Lifeline Assistance Program.

(C) The communications service is provided only to in-vehicle emergency communications customers.

(D) The communications service is provided by a not-for-profit communications service provider that is neither an affiliate of a for-profit organization nor has a for-profit affiliate and which provides voice mailboxes to low income consumers and the homeless.

(3) CONTRIBUTION ASSESSMENT FLEXIBILITY.—

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

(i) revenue from communications service;

(ii) in-use working phone numbers or any other identifier protocol or connection to the networks; or

(iii) network capacity.

(B) USE OF MORE THAN 1 METHODOLOGY.—If no single methodology employed under subparagraph (A) achieves the principles described in this subsection, the Commission may employ a combination of any such methodologies.

(C) REMOVAL OF INTERSTATE/INTRASTATE DISTINCTION.—Notwithstanding section 2(b) of this Act, the Commission may assess the interstate, intrastate, and international portions of communications service for the purpose of universal service contributions.

(D) GROUP PLAN DISCOUNT.—If the Commission utilizes a methodology under subparagraph (A) based in whole or in part on in-use working phone numbers, it may provide a discount for additional numbers provided under a group or family pricing plan for residential customers provided in 1 bill.

(4) NON-DISCRIMINATORY ELIGIBILITY REQUIREMENT.—A communications service provider is not exempted from the requirements of this subsection solely on the basis that such provider is not eligible to receive support under this section.

(5) BILLING.—

(A) IN GENERAL.—A communications service provider that contributes to universal service under this section may place on any customer bill a separate line item charge that does not exceed the amount for the customer that the provider is required to contribute under this subsection that shall be identified as the "Federal Universal Service Fee".

(B) LIMITATION.—A communications service provider may not separately bill customers for administrative costs associated with its collection and remission of universal service fees under this subsection.

(6) DEFINITIONS.—In this subsection:

(A) BROADBAND SERVICE.—The term "broadband service" means any service (whether part of a bundle of services or offered separately) used for transmission of information of a user's choosing with a transmission speed of at least 200 kilobits per second in at least 1 direction, regardless of the transmission medium or technology employed, that connects to the public Internet directly—

(i) to the public; or

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

(B) COMMUNICATIONS SERVICE.—The term "communications service" means telecommunications service, broadband service, or IP-enabled voice service (whether part of a bundle of services or offered separately).

(C) CONNECTION.—The term "connection" means the facilities that provide customers with access to a public or

private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless, or leased line.

(D) IN-VEHICLE EMERGENCY COMMUNICATIONS.—The term "in-vehicle emergency communications" means services and technology, including automatic crash notification, roadside assistance, SOS distress calls, remote diagnostics, navigation or location-based services, and other driver assistance services, which are integrated into passenger automobiles to facilitate communications from the automobile to emergency response professionals.

(E) IP-ENABLED VOICE SERVICE.—The term "IP-enabled voice service" means the provision of real-time 2-way voice communications offered to the public, or such classes of users as to be effectively available to the public, transmitted through customer premises equipment using Internet protocol, or a successor protocol, for a fee (whether part of a bundle of services or offered separately) with 2-way interconnection capability such that the service can originate traffic to, and terminate traffic from, the public switched telephone network.

(F) WORKING PHONE NUMBERS.—The term "working phone number" means an assigned number (as defined in section 52.15 of the Commission's regulations (47 C.F.R. 52.15)) or an intermediate number (as defined in that section).

(e) UNIVERSAL SERVICE SUPPORT.—After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

[(f) STATE AUTHORITY.—A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.**]**

(f) STATE AUTHORITY.—

(1) IN GENERAL.—A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. In adopting those rules, a State may require telecommunications service providers and IP-enabled voice service (as defined in subsection (d)(6)(E)) providers to contribute to universal service on the basis of—

(A) revenue;

(B) in-use working phone numbers or any other identifier protocol or connection to the networks;

(C) network capacity; or

(D) any combination of such methodologies.

(2) DISREGARD OF INTERSTATE COMPONENT.—A State may require telecommunications service providers and IP-enabled voice service providers to contribute under paragraph (1) regardless of whether the service contains an interstate component.

(3) BUNDLING.—If a telecommunications service or IP-enabled voice service is offered as part of a bundle of services, the Commission shall determine a fair allocation of revenue between the telecommunications service or IP-enabled voice service and other bundled services if the primary place of use of such bundled services is within the State.

(4) GUIDELINES.—Regulations adopted by a State under this subsection shall result in a specific, predictable, and sufficient mechanism to support universal service and shall be competitively and technologically neutral, equitable, and nondiscriminatory.

(g) INTEREXCHANGE AND INTERSTATE SERVICES.—Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State. *This section shall also apply to any services within the jurisdiction of the Commission that can be used as effective substitutes for interexchange telecommunications services, including any such substitute classified as an information service that uses telecommunications.*

(h) TELECOMMUNICATIONS SERVICES FOR CERTAIN PROVIDERS.—

(1) IN GENERAL.—

(A) HEALTH CARE PROVIDERS FOR RURAL AREAS.—

(i) IN GENERAL.—A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including *deployment of reasonable infrastructure and* instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated

as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal [service.] *service, and to receive reimbursement promptly of any amount in excess of such obligations to participate in universal service mechanisms.*

(ii) LIMITATION.—The discount required under clause (i) shall be available only to a public or nonprofit health care provider located in a rural area.

(iii) DEFINITION.—For purposes of this subparagraph, the term "rural area" means—

(I) any incorporated or unincorporated area in the United States, or in the territories or insular possessions of the United States that has not more than 20,000 inhabitants based on the most recent available population statistics published in the most recent decennial census issued by the Census Bureau;

(II) any area located outside the boundaries of any incorporated or unincorporated city, county, or borough that has more than 20,000 inhabitants based on the most recent available population statistics published in the most recent decennial census issued by the Census Bureau; or

(III) any area that qualified as a rural area under the rules of the Commission in effect on December 1, 2004.

(B) EDUCATIONAL PROVIDERS AND LIBRARIES.—All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. A telecommunications carrier providing service under this paragraph shall—

(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.

(2) ADVANCED SERVICES.—The Commission shall establish competitively neutral rules—

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-

profit elementary and secondary school classrooms, health care providers, and libraries; and

(B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

(3) TERMS AND CONDITIONS.—Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.

[(4) ELIGIBILITY OF USERS.—No entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business, is a school described in paragraph (7)(A) with an endowment of more than $50,000,000, or is a library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act.]

(4) CERTAIN USERS NOT ELIGIBLE.—Notwithstanding any other provision of this subsection, the following entities are not entitled to preferential rates or treatment as required by this subsection:

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

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

(C) A library or library consortium not eligible for assistance under the Library Services and Technology Act (20 U.S.C. 9101 et seq.) from a State library administrative agency.

(D) A library or library consortium not eligible for assistance funded by a grant under section 261 of the Library Services and Technology Act (20 U.S.C. 9161) from an Indian tribe or other organization.

(5) REQUIREMENTS FOR CERTAIN SCHOOLS WITH COMPUTERS HAVING INTERNET ACCESS.—

(A) INTERNET SAFETY.—

(i) IN GENERAL.—Except as provided in clause (ii), an elementary or secondary school having computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the school, school board, local educational agency, or other authority with responsibility for administration of the school—

(I) submits to the Commission the certifications described in subparagraphs (B) and (C);

(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the school under subsection (l); and

(III) ensures the use of such computers in accordance with the certifications.

(ii) APPLICABILITY.—The prohibition in clause (i) shall not apply with respect to a school that receives

services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

(iii) PUBLIC NOTICE; HEARING.—An elementary or secondary school described in clause (i), or the school board, local educational agency, or other authority with responsibility for administration of the school, shall provide reasonable public notice and hold at least 1 public hearing or meeting to address the proposed Internet safety policy. In the case of an elementary or secondary school other than an elementary or secondary school as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), the notice and hearing required by this clause may be limited to those members of the public with a relationship to the school.

(B) CERTIFICATION WITH RESPECT TO MINORS.—A certification under this subparagraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

(i) is enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors and the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene;

(II) child pornography; or

(III) harmful to minors; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors.

(C) CERTIFICATION WITH RESPECT TO ADULTS.—A certification under this paragraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(D) DISABLING DURING ADULT USE.—An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(E) TIMING OF IMPLEMENTATION.

(i) IN GENERAL.—Subject to clause (ii) in the case of any school covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made—

(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

(ii) PROCESS.—

(I) SCHOOLS WITH INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A school covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

(II) SCHOOLS WITHOUT INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A school covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)—

(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any school that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all

subsequent program years under this subsection, until such time as such school comes into compliance with this paragraph.

(III) WAIVERS.—Any school subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year program may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A school, school board, local educational agency, or other authority with responsibility for administration of the school shall notify the Commission of the applicability of such subclause to the school. Such notice shall certify that the school in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the school is applying for funds under this subsection.

(F) NONCOMPLIANCE.—

(i) FAILURE TO SUBMIT CERTIFICATION.—Any school that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

(ii) FAILURE TO COMPLY WITH CERTIFICATION.—Any school that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse any funds and discounts received under this subsection for the period covered by such certification.

(iii) REMEDY OF NONCOMPLIANCE.—

(I) FAILURE TO SUBMIT.—A school that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the school shall be eligible for services at discount rates under this subsection.

(II) FAILURE TO COMPLY.—A school that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school shall be eligible for services at discount rates under this subsection.

(6) REQUIREMENTS FOR CERTAIN LIBRARIES WITH COMPUTERS HAVING INTERNET ACCESS.—

(A) INTERNET SAFETY.—

(i) IN GENERAL.—Except as provided in clause (ii), a library having one or more computers with Internet

access may not receive services at discount rates under paragraph (1)(B) unless the library—

(I) submits to the Commission the certifications described in subparagraphs (B) and (C); and

(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the library under subsection (l); and

(III) ensures the use of such computers in accordance with the certifications.

(ii) APPLICABILITY.—The prohibition in clause (i) shall not apply with respect to a library that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

(iii) PUBLIC NOTICE; HEARING.—A library described in clause (i) shall provide reasonable public notice and hold at least 1 public hearing or meeting to address the proposed Internet safety policy.

(B) CERTIFICATION WITH RESPECT TO MINORS.—A certification under this subparagraph is a certification that the library—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene;

(II) child pornography; or

(III) harmful to minors; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors.

(C) CERTIFICATION WITH RESPECT TO ADULTS.—A certification under this paragraph is a certification that the library—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(D) DISABLING DURING ADULT USE.—An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(E) TIMING OF IMPLEMENTATION.—

(i) IN GENERAL.—Subject to clause (ii) in the case of any library covered by this paragraph as of the effec-

tive date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made—

(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

(ii) PROCESS.—

(I) LIBRARIES WITH INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A library covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

(II) LIBRARIES WITHOUT INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A library covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)—

(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any library that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection,

until such time as such library comes into compliance with this paragraph.

(III) WAIVERS.—Any library subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A library, library board, or other authority with responsibility for administration of the library shall notify the Commission of the applicability of such subclause to the library. Such notice shall certify that the library in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the library is applying for funds under this subsection.

(F) NONCOMPLIANCE.—

(i) FAILURE TO SUBMIT CERTIFICATION.—Any library that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

(ii) FAILURE TO COMPLY WITH CERTIFICATION.—Any library that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse all funds and discounts received under this subsection for the period covered by such certification.

(iii) REMEDY OF NONCOMPLIANCE.—

(I) FAILURE TO SUBMIT.—A library that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the library shall be eligible for services at discount rates under this subsection.

(II) FAILURE TO COMPLY.—A library that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the library shall be eligible for services at discount rates under this subsection.

(7) DEFINITIONS.—For purposes of this subsection:

(A) ELEMENTARY AND SECONDARY SCHOOLS.—The term "elementary and secondary schools" means elementary schools and secondary schools, as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(B) HEALTH CARE PROVIDER.—The term "health care provider" means—

(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(ii) community health centers or health centers providing health care to migrants;

(iii) local health departments or agencies;

(iv) community mental health centers;

(v) not-for-profit hospitals;

(vi) rural health clinics; [and

[(vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).]

(vii) not-for-profit nursing homes or skilled nursing facilities;

(viii) critical access hospitals;

(ix) emergency medical services facilities;

(x) hospice providers;

(xi) rural dialysis facilities;

(xii) tribal health clinics;

(xiii) not-for-profit dental offices;

(xiv) school health clinics;

(xv) residential treatment facilities;

(xvi) rural pharmacies;

(xvii) consortia of health care providers consisting of 1 or more entities described in clauses (i) through (xv); and

(xviii) any other entity the Commission determines—

(I) eligible to receive discounted telecommunications service under paragraph (1)(A); and

(II) essential to the public health.

(C) PUBLIC INSTITUTIONAL TELECOMMUNICATIONS USER.—The term "public institutional telecommunications user" means an elementary or secondary school, a library, or a health care provider as those terms are defined in this paragraph.

(D) MINOR.—The term "minor" means any individual who has not attained the age of 17 years.

(E) OBSCENE.—The term "obscene" has the meaning given such term in section 1460 of title 18, United States Code.

(F) CHILD PORNOGRAPHY.—The term "child pornography" has the meaning given such term in section 2256 of title 18, United States Code.

(G) HARMFUL TO MINORS.—The term "harmful to minors" means any picture, image, graphic image file, or other visual depiction that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(H) SEXUAL ACT; SEXUAL CONTACT.—The terms "sexual act" and "sexual contact" have the meanings given such terms in section 2246 of title 18, United States Code.

(I) TECHNOLOGY PROTECTION MEASURE.—The term "technology protection measure" means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (5) or (6) to which such certification relates.

(i) CONSUMER PROTECTION.—The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.

(j) LIFELINE ASSISTANCE.—Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

(k) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.—A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

(l) INTERNET SAFETY POLICY REQUIREMENT FOR SCHOOLS AND LIBRARIES.—

(1) IN GENERAL.—In carrying out its responsibilities under subsection (h), each school or library to which subsection (h) applies shall—

(A) adopt and implement an Internet safety policy that addresses—

(i) access by minors to inappropriate matter on the Internet and World Wide Web;

(ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

(iii) unauthorized access, including so-called "hacking", and other unlawful activities by minors online;

(iv) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and

(v) measures designed to restrict minors' access to materials harmful to minors; and

(B) provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

(2) LOCAL DETERMINATION OF CONTENT.—A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may—

(A) establish criteria for making such determination;

(B) review the determination made by the certifying school, school board, local educational agency, library, or other authority; or

(C) consider the criteria employed by the certifying school, school board, local educational agency, library, or other authority in the administration of subsection (h)(1)(B).

(3) AVAILABILITY FOR REVIEW.—Each Internet safety policy adopted under this subsection shall be made available to the Commission, upon request of the Commission, by the school, school board, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

(4) EFFECTIVE DATE.—This subsection shall apply with respect to schools and libraries on or after the date that is 120 days after the date of the enactment of the Children's Internet Protection Act.

(m) NETWORK TRAFFIC IDENTIFICATION ACCOUNTABILITY STANDARDS.—

(1) NETWORK TRAFFIC IDENTIFICATION ACCOUNTABILITY STANDARDS.—A provider of voice communications services shall ensure, to the degree technically possible, that all traffic that originates on its network contains, or, in the case of nonoriginated traffic, preserves, sufficient information to allow for traffic identification by other voice communications service providers that transport or terminate such traffic, including information on the identity of the originating provider, the class of service of the originating line as required under Commission orders in effect on the date of enactment of the Internet and Universal Service Act of 2006, the calling and called parties, and such other information as the Commission deems appropriate. Except as otherwise permitted by the Commission, a provider that transports traffic between communications service providers shall signal-forward without altering call signaling information it receives from another provider.

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

(3) NETWORK TRAFFIC IDENTIFICATION ENFORCEMENT.—The Commission shall adopt and enforce clear penalties, fines, and sanctions under this section.

(4) VOICE COMMUNICATIONS SERVICE DEFINED.—In this subsection, the term "voice communications service" means telecommunications service or IP-enabled voice service (as defined in section 254(d)(6)(E)).

(n) AUDITS.—The Commission shall provide for random periodic audits, to be administered by the Universal Service Administrative Company, of each recipient of funds collected pursuant to subsection (d) with respect to its receipt and use of such support. With respect

to an eligible communications carrier, the audit shall include a review of its relative cost to provide service compared to other, similarly situated, universal service recipients based on their respective service areas (as defined in section 214(e)(5)). The Commission shall take such remedial action as it deems necessary if any audit under this subsection reveals improper use of universal service support, including the imposition of fines or other appropriate remedies.

SEC. 254A. BROADBAND FOR UNSERVED AREAS PROGRAM.

(a) PROGRAM ESTABLISHED.—

(1) IN GENERAL.—The Commission shall establish a new separate program to be known as the "Broadband for Unserved Areas Program".

(2) PURPOSE.—The purpose of the Program is to provide financial assistance for the deployment of broadband equipment and infrastructure necessary for the deployment of broadband service (including installation costs) to unserved areas throughout the United States.

(3) FUNDING.—The Program shall be funded by amounts collected under section 254(d).

(b) IMPLEMENTATION.—

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

(A) guidelines for determining which areas may be considered to be unserved areas for purposes of this section, which may be portions of service areas or study areas;

(B) criteria for determining which facilities-based providers of broadband service and which projects are eligible for support from the Program;

(C) procedural guidelines for awarding assistance from the Program on a merit-based and competitive basis;

(D) guidelines for application procedures, accounting and reporting requirements, and other appropriate fiscal controls for assistance made available from the Program, including random audits with respect to the receipt and use of funds under this section;

(E) a procedure for making funds in the Program available among the several States on an equitable basis; and

(F) the Universal Service Administrative Company as the administrator of the Program, subject to Commission rules and oversight.

(2) FACILITIES-BASED PROVIDER ELIGIBILITY.—For purposes of this section, satellite broadband service providers, terrestrial wireless broadband service providers, and wireline broadband service providers shall be considered to be facilities-based providers eligible for support from the Program. The deployment of satellite broadband service customer premises equipment shall be considered to be a project eligible for support from the Program.

(3) DE MINIMIS SUBSCRIBERSHIP EXCEPTION.—The availability of satellite broadband service in an area shall not preclude the designation of that area as an unserved area if the Commission determines that subscribership to broadband satellite service in the area is de minimis.

(4) MULTIPLE AREAS WITHIN STATE.—There may be more than 1 unserved area within a State.

(c) LIMITATIONS.—

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

(2) UNOBLIGATED BALANCES.—To the extent that the full amount in the program is not obligated for financial assistance under this section within a fiscal year, any unobligated balance shall be used to support universal service under section 254.

(3) SUPPORT LIMITED TO SINGLE FACILITIES-BASED PROVIDER PER UNSERVED AREA.—Assistance under this section may be provided only to 1 facilities-based provider of broadband service in each unserved area.

(d) APPLICATION WITH SECTION 410.—Section 410 shall not apply to the Broadband for Unserved Areas Program.

(e) BROADBAND SERVICE DEFINED.—

(1) IN GENERAL.—In this section, except to the extent revised by the Commission under paragraph (2), the term "broadband service" means any service used for transmission of information of a user's choosing at a transmission speed of at least 400 kilobits per second in at least 1 direction, regardless of the transmission medium or technology employed, that connects to the public Internet directly—

(A) to the public; or

(B) to such classes of users as to be effectively available directly to the public.

(2) ANNUAL REVIEW OF TRANSMISSION SPEED.—The Commission shall review the transmission speed component of the definition in paragraph (1) biannually and revise that component as appropriate.

(f) REPORT.—The Commission shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce making recommendations for an increase or decrease, if necessary, in the amounts credited to the program under this section.

PART III. SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

SEC. 276. PROVISION OF PAYPHONE SERVICE.

[47 U.S.C. 276]

(a) NONDISCRIMINATION SAFEGUARDS.—After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service—

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

(b) REGULATIONS.—

(1) CONTENTS OF REGULATIONS.—In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of

the general public, within 9 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that—

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90–623) proceeding;

(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

(2) PUBLIC INTEREST TELEPHONES.—In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

(3) EXISTING CONTRACTS.—Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996.

(c) STATE PREEMPTION.—To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

(d) [DEFINITION.—] *DEFINITIONS.*—As used in this section, the term "payphone service" means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary [services.] *services, and the term "call" includes any communication coming within the definition of "communications service" (as defined in section 254(d)) when it originated from a payphone.*

TITLE III—SPECIAL PROVISIONS RELATING TO RADIO

PART I. GENERAL PROVISIONS

SEC. 303. POWERS AND DUTIES OF COMMISSION.

[47 U.S.C. 303]

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: Provided, however, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l)(1) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States; except that such requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;

(2) Notwithstanding paragraph (1) of this subsection, an individual to whom a radio station is licensed under the provisions of this Act may be issued an operator's license to operate that station.

(3) In addition to amateur operator licenses which the Commission may issue to aliens pursuant to paragraph (2) of this subsection, and notwithstanding section 301 of this Act and paragraph (1) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a multilateral or bilateral agreement, to which the United States and the alien's government are parties, for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

(m)(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) has violated, or caused, aided, or abetted the violation of, any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) false or deceptive signals or communications, or

(2) a call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) has willfully or maliciously interfered with any other radio communications or signals; or

(F) has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307(e)(1); or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. The permittee or licensee, and the tower owner in any case in which the owner is not the permittee or licensee, shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the

Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

(t) Notwithstanding the provisions of section 301(e), have authority, in any case in which an aircraft registered in the United States is operated (pursuant to a lease, charter, or similar arrangement) by an aircraft operator who is subject to regulation by the government of a foreign nation, to enter into an agreement with such government under which the Commission shall recognize and accept any radio station licenses and radio operator licenses issued by such government with respect to such aircraft.

(u) Require that apparatus designed to receive television pictures broadcast simultaneously with sound be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when such apparatus is manufactured in the United States or imported for use in the United States, and its television picture screen is 13 inches or greater in size.

(v) Have exclusive jurisdiction to regulate the provision of direct-to-home satellite services. As used in this subsection, the term "direct-to-home satellite services" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

(w) Prescribe—

(1) on the basis of recommendations from an advisory committee established by the Commission in accordance with section 551(b)(2) of the Telecommunications Act of 1996, guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children: *Provided,* That nothing in this paragraph shall be construed to authorize any rating of video programming on the basis of its political or religious content; and

(2) with respect to any video programming that has been rated, and in consultation with the television industry, rules requiring distributors of such video programming to transmit such rating to permit parents to block the display

of video programming that they have determined is inappropriate for their children.

(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4).

(y) Have authority to allocate electromagnetic spectrum so as to provide flexibility of use, if—

(1) such use is consistent with international agreements to which the United States is a party; and

(2) the Commission finds, after notice and an opportunity for public comment, that—

(A) such an allocation would be in the public interest;

(B) such use would not deter investment in communications services and systems, or technology development; and

(C) such use would not result in harmful interference among users.

(z) Have authority with respect to digital television receivers to adopt such regulations and certifications as are necessary to implement the Report and Order in the matter of Digital Broadcast Content Protection, FCC 03–273, as ratified by the Congress in section 102(b) of the Consumer Competition and Broadband Promotion Act, with the exclusive purpose of limiting the indiscriminate redistribution of digital television content over the Internet or similar distribution platforms, including the authority to reconsider, amend, repeal, supplement, and otherwise modify any such regulations and certifications, in whole or in part, only for that purpose.

SEC. 303A. REQUIREMENTS FOR DIGITAL TELEVISION SETS AND CERTAIN OTHER EQUIPMENT.

After March 1, 2007, it is unlawful for a manufacturer or importer to import into the United States or ship in interstate commerce for sale or resale to the public, a television broadcast receiver (as defined in section 15.3(w) of the Commission's regulations (47 C.F.R. 15.3(w))) that is not equipped with a tuner capable of receiving and decoding digital signals.

SEC. 309. APPLICATION FOR LICENSE.

[47 U.S.C. 309]

(a) CONSIDERATIONS IN GRANTING APPLICATION.—Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

(b) TIME OF GRANTING APPLICATION.—Except as provided in subsection (c) of this section, no such application—

(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, or

(2) for an instrument of authorization in the case of a station in any of the following categories:

(A) industrial radio positioning stations for which frequencies are assigned on an exclusive basis,

(B) aeronautical en route stations,

(C) aeronautical advisory stations,

(D) airdrome control stations,

(E) aeronautical fixed stations, and

(F) such other stations or classes of stations, not in the broadcasting or common carrier services, as the Commission shall by rule prescribe,shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof.

(c) APPLICATIONS NOT AFFECTED BY SUBSECTION (b).—Subsection (b) of this section shall not apply—

(1) to any minor amendment of an application to which such subsection is applicable, or

(2) to any application for—

(A) a minor change in the facilities of an authorized station,

(B) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control,

(C) a license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license,

(D) extension of time to complete construction of authorized facilities,

(E) an authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station,

(F) authorizations pursuant to section 325(c) where the programs to be transmitted are special events not of a continuing nature,

(G) a special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or not to exceed sixty days pending the filing of an application for such regular operation, or

(H) an authorization under any of the proviso clauses of section 308(a).

(d) PETITION TO DENY APPLICATION; TIME; CONTENTS; REPLY; FINDINGS.—

(1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as

amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a) (or subsection (k) in the case of renewal of any broadcast station license). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a) (or subsection (k) in the case of renewal of any broadcast station license), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a) (or subsection (k) in the case of renewal of any broadcast station license), it shall proceed as provided in subsection (e).

(e) HEARINGS; INTERVENTION; EVIDENCE; BURDEN OF PROOF.—If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the Federal Register. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduc-

tion of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

(f) TEMPORARY AUTHORIZATION OF OPERATIONS UNDER SUBSECTION (b).—When an application subject to subsection (b) has been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such temporary operations for a period not exceeding 180 days, and upon making like findings may extend such temporary authorization for additional periods not to exceed 180 days. When any such grant of a temporary authorization is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.

(g) CLASSIFICATION OF APPLICATIONS.—The Commission is authorized to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

(h) FORM AND CONDITIONS OF STATION LICENSES.—Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 706 of this Act.

(i) RANDOM SELECTION.—

(1) GENERAL AUTHORITY.—Except as provided in paragraph (5), if there is more than one application for any initial license or construction permit, then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) unless the Commission determines the qualifications of such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law—

(A) adopt procedures for the submission of all or part of the evidence in written form;

(B) delegate the function of presiding at the taking of the evidence to Commission employees other than administrative law judges; and

(C) omit the determination required by subsection (a) with respect to any application other than the one selected pursuant to paragraph (1).

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

(B) The Commission shall have authority to require each qualified applicant seeking a significant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such times, and in accordance with such procedures, as the Commission may require.

(C) For purposes of this paragraph:

(i) The term "media of mass communications" includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term "minority group" includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

(4)(A) The Commission shall, after notice and opportunity for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(B) The Commission shall have authority to amend such rules from time to time to the extent necessary to carry out the provisions of this subsection. Any such amendment shall be made after notice and opportunity for hearing.

(C) Not later than 180 days after the date of enactment of this subparagraph, the Commission shall prescribe such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses or permits as a result of the methods employed to issue licenses under this subsection.

(5) TERMINATION OF AUTHORITY.—

(A) Except as provided in subparagraph (B), the Commission shall not issue any license or permit using a system of random selection under this subsection after July 1, 1997.

(B) Subparagraph (A) of this paragraph shall not apply with respect to licenses or permits for stations described in section 397(6) of this Act.

(j) USE OF COMPETITIVE BIDDING.—

(1) GENERAL AUTHORITY.—If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

(2) EXEMPTIONS.—The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—

(A) for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—

(i) are used to protect the safety of life, health, or property; and

(ii) are not made commercially available to the public;

(B) for initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(C) for stations described in section 397(6) of this Act.

(3) DESIGN OF SYSTEMS OF COMPETITIVE BIDDING.—For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. The Commission shall, directly or by contract, provide for the design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the pub-

lic, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource;

(D) efficient and intensive use of the electromagnetic spectrum;

(E) ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed—

(i) before issuance of bidding rules, to permit notice and comment on proposed auction procedures; and

(ii) after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services; and

(F) for any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)), the recovery of 110 percent of estimated relocation costs as provided to the Commission pursuant to section 113(g)(4) of such Act.

(4) CONTENTS OF REGULATIONS.—In prescribing regulations pursuant to paragraph (3), the Commission shall—

(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed [service, prescribe] *service*—

(i) prescribe area designations and bandwidth assignments that promote [(i) an] *(I) an* equitable distribution of licenses and services among geographic areas, [(ii)] *(II)* economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and [(iii)] *(III)*

investment in and rapid deployment of new technologies and [services;] services; and

(ii) consider the use of licensing spectrum in smaller geographic areas in order to encourage wireless deployment and build-out in rural and underserved areas of licensing spectrum in smaller geographic areas;

(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures;

(E) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits; and

(F) prescribe methods by which a reasonable reserve price will be required, or a minimum bid will be established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest.

(5) BIDDER AND LICENSEE QUALIFICATION.—No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (i)(2) for the resolution of any substantial and material issues of fact concerning qualifications.

(6) RULES OF CONSTRUCTION.—Nothing in this subsection, or in the use of competitive bidding, shall—

(A) alter spectrum allocation criteria and procedures established by the other provisions of this Act;

(B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 706, or any other provision of this Act (other than subsections (d)(2) and (e) of this section);

(C) diminish the authority of the Commission under the other provisions of this Act to regulate or reclaim spectrum licenses;

(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service reg-

ulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 8 of this Act.

(7) CONSIDERATION OF REVENUES IN PUBLIC INTEREST DETERMINATIONS.—

(A) CONSIDERATION PROHIBITED.—In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(B) CONSIDERATION LIMITED.—In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(C) CONSIDERATION OF DEMAND FOR SPECTRUM NOT AFFECTED.—Nothing in this paragraph shall be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services.

(8) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraphs (B), (D), and (E), all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Such offsetting collections are authorized to remain available until expended. No sums may be retained under this subparagraph during any fiscal year beginning after September 30, 1998, if the annual report of the Commission under section 4(k) for the second preceding fiscal year fails to include in the itemized statement required by paragraph (3) of such section a statement of each expenditure made for

purposes of conducting competitive bidding under this subsection during such second preceding fiscal year.

(C) DEPOSIT AND USE OF AUCTION ESCROW ACCOUNTS.—Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of the Treasury). Within 45 days following the conclusion of the competitive bidding—

(i) the deposits of successful bidders shall be paid to the Treasury, except as otherwise provided in subparagraph (E)(ii);

(ii) the deposits of unsuccessful bidders shall be returned to such bidders; and

(iii) the interest accrued to the account shall be transferred to the Telecommunications Development Fund established pursuant to section 714 of this Act.

(D) DISPOSITION OF CASH PROCEEDS.—Cash proceeds attributable to the auction of any eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall be deposited in the Spectrum Relocation Fund established under section 118 of such Act, and shall be available in accordance with that section.

(E) TRANSFER OF RECEIPTS.—

(i) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a fund to be known as the Digital Television Transition and Public Safety Fund.

(ii) PROCEEDS FOR FUNDS.—Notwithstanding subparagraph (A), the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum shall be deposited in the Digital Television Transition and Public Safety Fund.

(iii) TRANSFER OF AMOUNT TO TREASURY.—On September 30, 2009, the Secretary shall transfer $7,363,000,000 from the Digital Television Transition and Public Safety Fund to the general fund of the Treasury.

(iv) RECOVERED ANALOG SPECTRUM.—For purposes of clause (i), the term "recovered analog spectrum" has the meaning provided in paragraph (15)(C)(vi).

(9) USE OF FORMER GOVERNMENT SPECTRUM.—The Commission shall, not later than 5 years after the date of enactment of this subsection, issue licenses and permits pursuant to this subsection for the use of bands of frequencies that—

(A) in the aggregate span not less than 10 megahertz; and

(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

(10) AUTHORITY CONTINGENT ON AVAILABILITY OF ADDITIONAL SPECTRUM.—

(A) INITIAL CONDITIONS.—The Commission's authority to issue licenses or permits under this subsection shall not take effect unless—

(i) the Secretary of Commerce has submitted to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act;

(ii) such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz;

(iii) such bands of frequencies meet the criteria required by section 113(a) of such Act; and

(iv) the Commission has completed the rulemaking required by section 332(c)(1)(D) of this Act.

(B) SUBSEQUENT CONDITIONS.—The Commission's authority to issue licenses or permits under this subsection on and after 2 years after the date of the enactment of this subsection shall cease to be effective if—

(i) the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act;

(ii) the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of section 114(a) of such Act;

(iii) the Commission has failed to issue the regulations required by section 115(a) of such Act;

(iv) the Commission has failed to complete and submit to Congress, not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of State and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees; or

(v) the Commission has failed under section 332(c)(3) to grant or deny within the time required by such section any petition that a State has filed within 90 days after the date of enactment of this subsection;until such failure has been corrected.

(11) TERMINATION.—The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 2011.

(12) EVALUATION.—Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report—

(A) containing a statement of the revenues obtained, and a projection of the future revenues, from the use of competitive bidding systems under this subsection;

(B) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

(C) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

(D) evaluating whether and to what extent—

(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;

(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;

(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and

(iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process; and

(E) recommending any statutory changes that are needed to improve the competitive bidding process.

(13) RECOVERY OF VALUE OF PUBLIC SPECTRUM IN CONNECTION WITH PIONEER PREFERENCES.—

(A) IN GENERAL.—Notwithstanding paragraph (6)(G), the Commission shall not award licenses pursuant to a preferential treatment accorded by the Commission to persons who make significant contributions to the development of a new telecommunications service or technology, except in accordance with the requirements of this paragraph.

(B) RECOVERY OF VALUE.—The Commission shall recover for the public a portion of the value of the public spectrum resource made available to such person by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(i) identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(ii) dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(iii) computing the average of the per capita bid amounts for the licenses identified under clause (i);

(iv) reducing such average amount by 15 percent; and

(v) multiplying the amount determined under clause (iv) by the population of the service area of the license obtained by such person.

(C) INSTALLMENTS PERMITTED.—The Commission shall require such person to pay the sum required by subparagraph (B) in a lump sum or in guaranteed installment payments, with or without royalty payments, over a period of not more than 5 years.

(D) RULEMAKING ON PIONEER PREFERENCES.—Except with respect to pending applications described in clause (iv) of this subparagraph, the Commission shall prescribe regulations specifying the procedures and criteria by which the Commission will evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service. Such regulations shall—

(i) specify the procedures and criteria by which the significance of such contributions will be determined, after an opportunity for review and verification by experts in the radio sciences drawn from among persons who are not employees of the Commission or by any applicant for such preferential treatment;

(ii) include such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of any such contribution justifies any reduction in the amounts paid for comparable licenses under this subsection;

(iii) be prescribed not later than 6 months after the date of enactment of this paragraph;

(iv) not apply to applications that have been accepted for filing on or before September 1, 1994; and

(v) cease to be effective on the date of the expiration of the Commission's authority under subparagraph (F).

(E) IMPLEMENTATION WITH RESPECT TO PENDING APPLICATIONS.—In applying this paragraph to any broadband licenses in the personal communications service awarded pursuant to the preferential treatment accorded by the Federal Communications Commission in the Third Report and Order in General Docket 90–314 (FCC 93–550, released February 3, 1994)—

(i) the Commission shall not reconsider the award of preferences in such Third Report and Order, and the Commission shall not delay the grant of licenses based on such awards more than 15 days following the date of enactment of this paragraph, and the award of such preferences and licenses shall not be subject to administrative or judicial review;

(ii) the Commission shall not alter the bandwidth or service areas designated for such licenses in such Third Report and Order;

(iii) except as provided in clause (v), the Commission shall use, as the most reasonably comparable licenses for purposes of subparagraph (B)(i), the broadband li-

censes in the personal communications service for blocks A and B for the 20 largest markets (ranked by population) in which no applicant has obtained preferential treatment;

(iv) for purposes of subparagraph (C), the Commission shall permit guaranteed installment payments over a period of 5 years, subject to—

(I) the payment only of interest on unpaid balances during the first 2 years, commencing not later than 30 days after the award of the license (including any preferential treatment used in making such award) is final and no longer subject to administrative or judicial review, except that no such payment shall be required prior to the date of completion of the auction of the comparable licenses described in clause (iii); and

(II) payment of the unpaid balance and interest thereon after the end of such 2 years in accordance with the regulations prescribed by the Commission; and

(v) the Commission shall recover with respect to broadband licenses in the personal communications service an amount under this paragraph that is equal to not less than $400,000,000, and if such amount is less than $400,000,000, the Commission shall recover an amount equal to $400,000,000 by allocating such amount among the holders of such licenses based on the population of the license areas held by each licensee.The Commission shall not include in any amounts required to be collected under clause (v) the interest on unpaid balances required to be collected under clause (iv).

(F) EXPIRATION.—The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on the date of enactment of the Balanced Budget Act of 1997.

(G) EFFECTIVE DATE.—This paragraph shall be effective on the date of its enactment and apply to any licenses issued on or after August 1, 1994, by the Federal Communications Commission pursuant to any licensing procedure that provides preferential treatment (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

(14) AUCTION OF RECAPTURED BROADCAST TELEVISION SPECTRUM.—

(A) LIMITATIONS ON TERMS OF TERRESTRIAL TELEVISION BROADCAST LICENSES.—A full-power television broadcast license that authorizes analog television service may not be

renewed to authorize such service for a period that extends beyond February 17, 2009.

(B) SPECTRUM REVERSION AND RESALE.—

(i) The Commission shall—

(I) ensure that, as licenses for analog television service expire pursuant to subparagraph (A), each licensee shall cease using electromagnetic spectrum assigned to such service according to the Commission's direction; and

(II) reclaim and organize the electromagnetic spectrum in a manner consistent with the objectives described in paragraph (3) of this subsection.

(ii) Licensees for new services occupying spectrum reclaimed pursuant to clause (i) shall be assigned in accordance with this subsection.

(C) CERTAIN LIMITATIONS ON QUALIFIED BIDDERS PROHIBITED.—In prescribing any regulations relating to the qualification of bidders for spectrum reclaimed pursuant to subparagraph (B)(i), the Commission, for any license that may be used for any digital television service where the grade A contour of the station is projected to encompass the entirety of a city with a population in excess of 400,000 (as determined using the 1990 decennial census), shall not—

(i) preclude any party from being a qualified bidder for such spectrum on the basis of—

(I) the Commission's duopoly rule (47 C.F.R. 73.3555(b)); or

(II) the Commission's newspaper cross-ownership rule (47 C.F.R. 73.3555(d)); or

(ii) apply either such rule to preclude such a party that is a winning bidder in a competitive bidding for such spectrum from using such spectrum for digital television service.

(D) BORDER STATIONS.—An analog broadcast television station, whose programming is broadcast entirely in the Spanish-language, that prior to February 17, 2009, is licensed by the Commission to serve communities located within 50 miles of the common border with the United Mexican States and can establish to the satisfaction of the Federal Communications Commission that its continued operation in analog is in the public interest, shall be entitled to the renewal of its television broadcast license authorizing analog television service and to operate on a channel between 2 and 51 that complies with the following provisions through February 17, 2011:

(i) The channel used for analog operation may not—

(I) prevent the auction of recovered spectrum, as provided for in paragraph (15) of this subsection;

(II) prevent the use of recovered spectrum by public safety services, as provided for by section 337(a)(1) of this Act; and

(III) encumber nor interfere with any channels reserved for public safety use as designated in FCC ET Docket No. 97–157.

(ii) The station shall operate on its assigned analog channel as of February 16, 2009, if that channel—

(I) is designated between 2 and 51;

(II) has not been assigned to the station itself or another station for digital operation after the digital transition; and

(III) could be used by that station for analog operation after the digital transition without causing interference to previously authorized digital television stations.

(iii) If the station does not meet the criteria of clause (ii) for operation on its assigned analog channel as of February 16, 2009, the station may request, and the Commission shall promptly act upon such request, to be assigned a new channel for its analog operation, if the requested channel—

(I) is shall between channels 2 and 51; and

(II) allows the station to operate on a primary basis without causing interference to other analog or digital television stations or to stations licensed to operate in other radio services that also operate on channels between 2 and 51. Where mutually exclusive applications are submitted for analog television operation on a channel under the provisions of this section, the Commission shall award the authority to use that channel through the application of the procedures of this subsection and giving due consideration to the alternative resolution procedures of paragraph (6)(E) of this subsection.

(iv) The station shall, from February 16, 2009, through February 17, 2011, regularly broadcast Spanish-language public service announcements that serve to educate the station's viewers to the digital transition and the need to secure digital converters or monitors so that the station's viewers can receive the station's digital signal after February 17, 2011.

(15) COMMISSION TO DETERMINE TIMING OF AUCTIONS.—

(A) COMMISSION AUTHORITY.—Subject to the provisions of this subsection (including paragraph (11)), but notwithstanding any other provision of law, the Commission shall determine the timing of and deadlines for the conduct of competitive bidding under this subsection, including the timing of and deadlines for qualifying for bidding; conducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.

(B) TERMINATION OF PORTIONS OF AUCTIONS 31 AND 44.—Except as provided in subparagraph (C), the Commission shall not commence or conduct auctions 31 and 44 on June 19, 2002, as specified in the public notices of March 19, 2002, and March 20, 2002 (DA 02-659 and DA 02-563).

(C) EXCEPTION.—

(i) BLOCKS EXCEPTED.—Subparagraph (B) shall not apply to the auction of—

(I) the C-block of licenses on the bands of frequencies located at 710-716 megahertz, and 740-746 megahertz; or

(II) the D-block of licenses on the bands of frequencies located at 716-722 megahertz.

(ii) ELIGIBLE BIDDERS.—The entities that shall be eligible to bid in the auction of the C-block and D-block licenses described in clause (i) shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline.

(iii) AUCTION DEADLINES FOR EXCEPTED BLOCKS.—Notwithstanding subparagraph (B), the auction of the C-block and D-block licenses described in clause (i) shall be commenced no earlier than August 19, 2002, and no later than September 19, 2002, and the proceeds of such auction shall be deposited in accordance with paragraph (8) not later than December 31, 2002.

(iv) REPORT.—Within one year after the date of enactment of this paragraph, the Commission shall submit a report to Congress—

(I) specifying when the Commission intends to reschedule auctions 31 and 44 (other than the blocks excepted by clause (i)); and

(II) describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.

(v) ADDITIONAL DEADLINES FOR RECOVERED ANALOG SPECTRUM.—Notwithstanding subparagraph (B), the Commission shall conduct the auction of the licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008, and shall deposit the proceeds of such auction in accordance with paragraph (8)(E)(ii) not later than June 30, 2008.

(vi) RECOVERED ANALOG SPECTRUM.—For purposes of clause (v), the term "recovered analog spectrum" means the spectrum between channels 52 and 69, inclusive (between frequencies 698 and 806 megahertz, inclusive) reclaimed from analog television service broadcasting under paragraph (14), other than—

(I) the spectrum required by section 337 to be made available for public safety services; and

(II) the spectrum auctioned prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.

(D) RETURN OF PAYMENTS.—Within one month after the date of enactment of this paragraph, the Commission shall return to the bidders for licenses in the A-block, B-block, and E-block of auction 44 the full amount of all upfront payments made by such bidders for such licenses.

(16) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE FREQUENCIES.—

(A) SPECIAL REGULATIONS.—The Commission shall revise the regulations prescribed under paragraph (4)(F) of this subsection to prescribe methods by which the total cash proceeds from any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall at least equal 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act.

(B) CONCLUSION OF AUCTIONS CONTINGENT ON MINIMUM PROCEEDS.—The Commission shall not conclude any auction of eligible frequencies described in section 113(g)(2) of such Act if the total cash proceeds attributable to such spectrum are less than 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act. If the Commission is unable to conclude an auction for the foregoing reason, the Commission shall cancel the auction, return within 45 days after the auction cancellation date any deposits from participating bidders held in escrow, and absolve such bidders from any obligation to the United States to bid in any subsequent reauction of such spectrum.

(C) AUTHORITY TO ISSUE PRIOR TO DEAUTHORIZATION.—In any auction conducted under the regulations required by subparagraph (A), the Commission may grant a license assigned for the use of eligible frequencies prior to the termination of an eligible Federal entity's authorization. However, the Commission shall condition such license by requiring that the licensee cannot cause harmful interference to such Federal entity until such entity's authorization has been terminated by the National Telecommunications and Information Administration.

(17) REPORT ON THE IMPACT OF SECONDARY MARKET TRANSACTIONS.—Not later than 2 years after the date of enactment of the Rural Wireless and Broadband Service Act of 2006, and every 2 years thereafter until the database developed under paragraph (18) is available to the public, the Commission shall submit a report to Congress analyzing and evaluating the impact of the Commission's—

(A) spectrum leasing; and

(B) spectrum partitioning and disaggregation rules in facilitating, through the development of secondary markets, the deployment of spectrum-based services to the public, particularly to those members of the public residing in rural and underserved areas.

(18) PUBLICLY ACCESSIBLE INTEGRATED DATA BASE.—The Commission, in coordination with the Assistant Secretary of Commerce for Communications and Information, shall develop an integrated national database, accessible by the public, that identifies by name, address, and contact information for each licensee, the spectrum assigned to each such licensee, and the geographic area to which the spectrum is assigned or licensed.

The database may not provide public access to information protected from public disclosure under chapter 5 of title 5, United States Code, or the disclosure of which would compromise national security.

(k) BROADCAST STATION RENEWAL PROCEDURES.—

(1) STANDARDS FOR RENEWAL.—If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license—

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

(2) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

(3) STANDARDS FOR DENIAL.—If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

(A) issue an order denying the renewal application filed by such licensee under section 308; and

(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

(4) COMPETITOR CONSIDERATION PROHIBITED.—In making the determinations specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.

(l) APPLICABILITY OF COMPETITIVE BIDDING TO PENDING COMPARATIVE LICENSING CASES.—With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall—

(1) have the authority to conduct a competitive bidding proceeding pursuant to subsection (j) to assign such license or permit;

(2) treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding; and

(3) waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal

of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997.

SEC. 325. FALSE, FRAUDULENT, OR UNAUTHORIZED TRANSMISSIONS.

[47 U.S.C. 325]

(a) FALSE DISTRESS SIGNALS; REBROADCASTING PROGRAMS.—No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

(b) CONSENT TO RETRANSMISSION OF BROADCASTING STATION SIGNALS.—

(1) No [cable system] *video service provider* or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

(A) with the express authority of the originating station;

(B) under section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or

(C) under section 338, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

(2) This subsection shall not apply—

(A) to retransmission of the signal of a noncommercial television broadcast station;

(B) to retransmission of the signal of a television broadcast station outside the station's local market by a satellite carrier directly to its subscribers, if—

(i) such station was a superstation on May 1, 1991;

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code; and

(iii) the satellite carrier complies with any network nonduplication, syndicated exclusivity, and sports blackout rules adopted by the Commission under section 339(b) of this Act;

(C) until December 31, 2009, to retransmission of the signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal—

(i) is located in an area outside the local market of such stations; and

(ii) resides in an unserved household;

(D) to retransmission by a cable operator or other multichannel video provider, other than a satellite carrier, of the signal of a television broadcast station outside the station's local market if such signal was obtained from a satellite carrier and—

(i) the originating station was a superstation on May 1, 1991; and

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code; or

(E) during the 6-month period beginning on the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, to the retransmission of the signal of a television broadcast station within the station's local market by a satellite carrier directly to its subscribers under the statutory license of section 122 of title 17, United States Code. *The term "video service provider" has the meaning given it in section 602(25) of this Act.*

For purposes of this paragraph, the terms "satellite carrier" and "superstation" have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of the enactment of the Cable Television Consumer Protection and Competition Act of 1992, the term "unserved household" has the meaning given that term under section 119(d) of such title, and the term "local market" has the meaning given that term in section 122(j) of such title.

(3)(A) Within 45 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

(C) The Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitations contained in paragraph (2). Such regulations shall—

(i) establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph;

(ii) until January 1, 2010, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations; and

(iii) until January 1, 2010, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations.

(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system. If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission consent under this subsection with respect to a satellite carrier, section 338 shall not apply to the carriage of the signal of such station by such satellite carrier.

(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 338, 614, or 615 of any station electing to assert the right to signal carriage under that section.

(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.

(7) For purposes of this subsection, the term—

(A) "network station" has the meaning given such term under section 119(d) of title 17, United States Code; and

(B) "television broadcast station" means an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(c) BROADCAST TO FOREIGN COUNTRIES FOR REBROADCAST TO UNITED STATES; PERMIT.—No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound

waves produced, and cause to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.

(d) APPLICATION FOR PERMIT.—Such application shall contain such information as the Commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 hereof with respect to applications for station licenses or renewal or modification thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the public interest.

(e) ENFORCEMENT PROCEEDINGS AGAINST SATELLITE CARRIERS CONCERNING RETRANSMISSIONS OF TELEVISION BROADCAST STATIONS IN THE RESPECTIVE LOCAL MARKETS OF SUCH CARRIERS.—

(1) COMPLAINTS BY TELEVISION BROADCAST STATIONS.—If after the expiration of the 6-month period described under subsection (b)(2)(E) a television broadcast station believes that a satellite carrier has retransmitted its signal to any person in the local market of such station in violation of subsection (b)(1), the station may file with the Commission a complaint providing—

(A) the name, address, and call letters of the station;

(B) the name and address of the satellite carrier;

(C) the dates on which the alleged retransmission occurred;

(D) the street address of at least one person in the local market of the station to whom the alleged retransmission was made;

(E) a statement that the retransmission was not expressly authorized by the television broadcast station; and

(F) the name and address of counsel for the station.

(2) SERVICE OF COMPLAINTS ON SATELLITE CARRIERS.—For purposes of any proceeding under this subsection, any satellite carrier that retransmits the signal of any broadcast station shall be deemed to designate the Secretary of the Commission as its agent for service of process. A television broadcast station may serve a satellite carrier with a complaint concerning an alleged violation of subsection (b)(1) through retransmission of a station within the local market of such station by filing the original and two copies of the complaint with the Secretary of the Commission and serving a copy of the complaint on the satellite carrier by means of two commonly used overnight delivery services, each addressed to the chief executive officer of the satellite carrier at its principal place of business, and each marked "URGENT LITIGATION MATTER" on the outer packaging. Service shall be deemed complete one business day after a copy of the complaint is provided to the delivery services for overnight delivery. On receipt of a complaint filed by a television broadcast station under this subsection, the Secretary of the Commission shall send the original complaint by United

States mail, postage prepaid, receipt requested, addressed to the chief executive officer of the satellite carrier at its principal place of business.

(3) ANSWERS BY SATELLITE CARRIERS.—Within five business days after the date of service, the satellite carrier shall file an answer with the Commission and shall serve the answer by a commonly used overnight delivery service and by United States mail, on the counsel designated in the complaint at the address listed for such counsel in the complaint.

(4) DEFENSES.—

(A) EXCLUSIVE DEFENSES.—The defenses under this paragraph are the exclusive defenses available to a satellite carrier against which a complaint under this subsection is filed.

(B) DEFENSES.—The defenses referred to under subparagraph (A) are the defenses that—

(i) the satellite carrier did not retransmit the television broadcast station to any person in the local market of the station during the time period specified in the complaint;

(ii) the television broadcast station had, in a writing signed by an officer of the television broadcast station, expressly authorized the retransmission of the station by the satellite carrier to each person in the local market of the television broadcast station to which the satellite carrier made such retransmissions for the entire time period during which it is alleged that a violation of subsection (b)(1) has occurred;

(iii) the retransmission was made after January 1, 2002, and the television broadcast station had elected to assert the right to carriage under section 338 as against the satellite carrier for the relevant period; or

(iv) the station being retransmitted is a noncommercial television broadcast station.

(5) COUNTING OF VIOLATIONS.—The retransmission without consent of a particular television broadcast station on a particular day to one or more persons in the local market of the station shall be considered a separate violation of subsection (b)(1).

(6) BURDEN OF PROOF.—With respect to each alleged violation, the burden of proof shall be on a television broadcast station to establish that the satellite carrier retransmitted the station to at least one person in the local market of the station on the day in question. The burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i).

(7) PROCEDURES.—

(A) REGULATIONS.—Within 60 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall issue procedural regulations implementing this subsection which shall supersede procedures under section 312.

(B) DETERMINATIONS.—

(i) IN GENERAL.—Within 45 days after the filing of a complaint, the Commission shall issue a final determination in any proceeding brought under this subsection. The Commission's final determination shall specify the number of violations committed by the satellite carrier. The Commission shall hear witnesses only if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

(ii) DISCOVERY.—The Commission may direct the parties to exchange pertinent documents, and if necessary to take prehearing depositions, on such schedule as the Commission may approve, but only if the Commission first determines that such discovery is necessary to resolve a genuine dispute about material facts, consistent with the obligation to make a final determination within 45 days.

(8) RELIEF.—If the Commission determines that a satellite carrier has retransmitted the television broadcast station to at least one person in the local market of such station and has failed to meet its burden of proving one of the defenses under paragraph (4) with respect to such retransmission, the Commission shall be required to—

(A) make a finding that the satellite carrier violated subsection (b)(1) with respect to that station; and

(B) issue an order, within 45 days after the filing of the complaint, containing—

(i) a cease-and-desist order directing the satellite carrier immediately to stop making any further retransmissions of the television broadcast station to any person within the local market of such station until such time as the Commission determines that the satellite carrier is in compliance with subsection (b)(1) with respect to such station;

(ii) if the satellite carrier is found to have violated subsection (b)(1) with respect to more than two television broadcast stations, a cease-and-desist order directing the satellite carrier to stop making any further retransmission of any television broadcast station to any person within the local market of such station, until such time as the Commission, after giving notice to the station, that the satellite carrier is in compliance with subsection (b)(1) with respect to such stations; and

(iii) an award to the complainant of that complainant's costs and reasonable attorney's fees.

(9) COURT PROCEEDINGS ON ENFORCEMENT OF COMMISSION ORDER.—

(A) IN GENERAL.—On entry by the Commission of a final order granting relief under this subsection—

(i) a television broadcast station may apply within 30 days after such entry to the United States District

Court for the Eastern District of Virginia for a final judgment enforcing all relief granted by the Commission; and

(ii) the satellite carrier may apply within 30 days after such entry to the United States District Court for the Eastern District of Virginia for a judgment reversing the Commission's order.

(B) APPEAL.—The procedure for an appeal under this paragraph by the satellite carrier shall supersede any other appeal rights under Federal or State law. A United States district court shall be deemed to have personal jurisdiction over the satellite carrier if the carrier, or a company under common control with the satellite carrier, has delivered television programming by satellite to more than 30 customers in that district during the preceding 4-year period. If the United States District Court for the Eastern District of Virginia does not have personal jurisdiction over the satellite carrier, an enforcement action or appeal shall be brought in the United States District Court for the District of Columbia, which may find personal jurisdiction based on the satellite carrier's ownership of licenses issued by the Commission. An application by a television broadcast station for an order enforcing any cease-and-desist relief granted by the Commission shall be resolved on a highly expedited schedule. No discovery may be conducted by the parties in any such proceeding. The district court shall enforce the Commission order unless the Commission record reflects manifest error and an abuse of discretion by the Commission.

(10) CIVIL ACTION FOR STATUTORY DAMAGES.—Within 6 months after issuance of an order by the Commission under this subsection, a television broadcast station may file a civil action in any United States district court that has personal jurisdiction over the satellite carrier for an award of statutory damages for any violation that the Commission has determined to have been committed by a satellite carrier under this subsection. Such action shall not be subject to transfer under section 1404(a) of title 28, United States Code. On finding that the satellite carrier has committed one or more violations of subsection (b), the District Court shall be required to award the television broadcast station statutory damages of $25,000 per violation, in accordance with paragraph (5), and the costs and attorney's fees incurred by the station. Such statutory damages shall be awarded only if the television broadcast station has filed a binding stipulation with the court that such station will donate the full amount in excess of $1,000 of any statutory damage award to the United States Treasury for public purposes. Notwithstanding any other provision of law, a station shall incur no tax liability of any kind with respect to any amounts so donated. Discovery may be conducted by the parties in any proceeding under this paragraph only if and to the extent necessary to resolve a genuinely disputed issue of fact concerning one of the defenses under paragraph (4). In any such action, the defenses under paragraph (4) shall be exclu-

sive, and the burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i). A judgment under this paragraph may be enforced in any manner permissible under Federal or State law.

(11) APPEALS.—

(A) IN GENERAL.—The nonprevailing party before a United States district court may appeal a decision under this subsection to the United States Court of Appeals with jurisdiction over that district court. The Court of Appeals shall not issue any stay of the effectiveness of any decision granting relief against a satellite carrier unless the carrier presents clear and convincing evidence that it is highly likely to prevail on appeal and only after posting a bond for the full amount of any monetary award assessed against it and for such further amount as the Court of Appeals may believe appropriate.

(B) APPEAL.—If the Commission denies relief in response to a complaint filed by a television broadcast station under this subsection, the television broadcast station filing the complaint may file an appeal with the United States Court of Appeals for the District of Columbia Circuit.

(12) SUNSET.—No complaint or civil action may be filed under this subsection after December 31, 2001. This subsection shall continue to apply to any complaint or civil action filed on or before such date.

SEC. 330. PROHIBITION AGAINST SHIPMENT OF CERTAIN TELEVISION RECEIVERS.

[47 U.S.C. 330]

(a) No person shall ship in interstate commerce, or import from any foreign country into the United States, for sale or resale to the public, apparatus described in paragraph (s) of section 303 unless it complies with rules prescribed by the Commission pursuant to the authority granted by that paragraph: Provided, That this section shall not apply to carriers transporting such apparatus without trading in it.

(b) No person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States, any apparatus described in section 303(u) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section. Such rules shall provide performance and display standards for such built-in decoder circuitry. Such rules shall further require that all such apparatus be able to receive and display closed captioning which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and display specifications set forth in the Public Broadcasting System engineering report numbered E-7709-C dated May 1980, as amended by the Telecaption II Decoder Module Performance Specification published by the National Captioning Institute, November 1985. As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that closed-captioning service continues to be available to consumers. This subsection shall not apply to carriers transporting such apparatus without trading it.

(c)(1) Except as provided in paragraph (2), no person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(x) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section.

(2) This subsection shall not apply to carriers transporting apparatus referred to in paragraph (1) without trading in it.

(3) The rules prescribed by the Commission under this subsection shall provide for the oversight by the Commission of the adoption of standards by industry for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by industry under the supervision of the Commission.

(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. If the Commission determines that an alternative blocking technology exists that—

(A) enables parents to block programming based on identifying programs without ratings,

(B) is available to consumers at a cost which is comparable to the cost of technology that allows parents to block programming based on common ratings, and

(C) will allow parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings,

the Commission shall amend the rules prescribed pursuant to section 303(x) to require that the apparatus described in such section be equipped with either the blocking technology described in such section or the alternative blocking technology described in this paragraph.

(d) CONSUMER EDUCATION REQUIREMENTS REGARDING ANALOG RECEIVERS.—

(1) REQUIREMENTS FOR MANUFACTURERS.—The manufacturer of any analog only television set manufactured in the United States or shipped in interstate commerce shall—

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

(B) display the label required by paragraph (3) on the outside of the retail packaging of the television set—

(i) in a clear and conspicuous manner; and

(ii) in a manner that cannot be removed.

(2) REQUIREMENTS FOR RETAILERS.—

(A) IN GENERAL.—A retailer of analog only television sets that sells such television sets via direct mail, catalog, or electronic means, shall include in all advertisements or descriptions of such television set the product and the information described in paragraph (3) within 120 days after the date of enactment of the Advanced Telecommunications and Opportunities Reform Act.

(B) DUTY TO ADEQUATELY INFORM CONSUMERS.—Notwithstanding the requirement in subparagraph (A), it shall be a violation of this Act for any retailer of analog-only television sets—

(i) to fail to adequately inform consumers about the availability of digital-to-analog converter boxes; or

(ii) to provide misleading information about the availability and cost of such converter boxes.

(3) PRODUCT AND DIGITAL TELEVISION TRANSITION INFORMATION.—

(A) LABEL REQUIREMENT.—The following product and digital television transition information shall be displayed as a label on analog television sets, in both English and Spanish:

"CONSUMER ALERT

"This TV has only 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.".

(B) BLOCKING TECHNOLOGY.—All television sets, analog or digital, that have a picture screen 13 inches or greater in size (measured diagonally), shall be equipped with a feature designed to enable viewers to block display of all programs with a common rating. For additional information on such technology, visit http://www.tvguidelines.org.

(4) COMMISSION OUTREACH.—

(A) IN GENERAL.—Beginning within 1 month after the date of enactment of the Advanced Telecommunications and Opportunities Reform Act, the Commission shall initiate a public outreach program the purpose of which is to educate consumers about the digital television transition. Not later than October 15, 2007, the Commission shall complete and submit a national plan to Congress on how to best carry out such public outreach program. Such plan shall include a description of how such public outreach program will carry out the purposes, recommendations, and requirements described in subparagraphs (A), (B), and (C) of section 701(b)(3) of the Advanced Telecommunications and Opportunities Reform Act.

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

(C) TELEPHONE INFORMATION HOTLINE.—The Commission shall establish, maintain, and make public a toll-free information hotline regarding the digital television transition.

(5) PUBLIC SERVICE ANNOUNCEMENTS.—

(A) IN GENERAL.—Each television broadcast licensee or permittee shall broadcast at least 2 30-second public service announcements daily—

(i) during the 3-month period beginning December 1, 2007, such date being 1 month prior to the commencement of the digital-to-analog converter box subsidy program authorized under 3005 of the Digital Television Transition and Public Safety Act of 2005 (Public Law 109–171; 120 Stat. 24); and

(ii) during the 3-month period beginning on November 17, 2008, such date being 3 months prior to the Nation's transition to digital broadcasting as required under section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)).

(B) MULTILINGUAL NOTICES.—The information required to be provided to consumers under this paragraph shall be provided in English and Spanish and may be provided in such other languages as may be appropriate to the marketing segments of the public to which the information is addressed.

(C) TIME OF BROADCAST.—The public service announcements required under subparagraph (A) shall be broadcast at such times as the Commission, in accordance with the Working Group established under section 701(b)(3) of the Advanced Telecommunications and Opportunities Reform Act, may require in order to assure the widest possible audience.

(D) CONTENT OF BROADCAST.—The public service announcements required under subparagraph (A) shall, at least—

(i) notify the public of the—

(I) date of the digital transition; and

(II) starting date of the digital-to-analog converter box subsidy program described in subparagraph (A); and

(ii) contain the address of the website and toll-free information hotline provided by the Commission under subparagraphs (B) and (C) of paragraph (4).

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

(7) SUNSET.—The requirements of this subsection, excluding the consumer alert labeling provision described in paragraph (3), shall cease to apply to manufacturers and retailers on December 1, 2009.

[(d)**]** *(e)* For the purposes of this section, and sections 303(s), 303(u), and 303(x)—

(1) The term "interstate commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B)

commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.

(2) The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but does not include the Canal Zone.

SEC. 332. MOBILE SERVICES.

[47 U.S.C. 332]

(a) FACTORS WHICH COMMISSION MUST CONSIDER.—In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) ADVISORY COORDINATING COMMITTEES.—

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) REGULATORY TREATMENT OF MOBILE SERVICES.—

(1) COMMON CARRIER TREATMENT OF COMMERCIAL MOBILE SERVICES.—

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208, and may specify any other provision only if the Commission determines that—

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after the date of enactment of this subparagraph, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) NON-COMMON CARRIER TREATMENT OF PRIVATE MOBILE SERVICES.—A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency

allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) STATE PREEMPTION.—

(A) [Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.] *(i) Notwithstanding sections 2(b) and 221(b) or any other provision of law, a State or local government shall not regulate or adjudicate—*

(I) the entry of or the rates charged by any provider of commercial mobile service or private mobile service for any such mobile service or any or any other service that is primarily intended for receipt on or use with a wireless device that is utilized by a customer of such mobile service in connection with such mobile service; or

(II) any terms and conditions of such mobile service or any other such service, except pursuant to a law or regulation generally applicable to businesses in the State other than a law or regulation that regulates or has the effect of regulating the entry or rates for any such service.

(ii) Nothing in this section shall affect the authority of the Commission under this Act to adopt consumer protection requirements applicable to providers of commercial mobile service or private mobile services.

(iii) Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that—

[(i)] *(I)* market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

[(ii)] *(II)* such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) REGULATORY TREATMENT OF COMMUNICATIONS SATELLITE CORPORATION.—Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 of the corporation authorized by title III of such Act.

(5) SPACE SEGMENT CAPACITY.—Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) FOREIGN OWNERSHIP.—The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, may waive

the application of section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) LIMITATIONS.—

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State

or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) DEFINITIONS.—For purposes of this paragraph—

(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and

(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).

(8) MOBILE SERVICES ACCESS.—A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "commercial mobile service" means any mobile service (as defined in section 3) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

(3) the term "private mobile service" means any mobile service (as defined in section 3) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

SEC. 335. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.

[47 U.S.C. 335]

(a) PROCEEDING REQUIRED TO REVIEW DBS RESPONSIBILITIES.—The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum,

apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

(b) CARRIAGE OBLIGATIONS FOR NONCOMMERCIAL, EDUCATIONAL, AND INFORMATIONAL PROGRAMMING.—

(1) CHANNEL CAPACITY REQUIRED.—The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.

(2) USE OF UNUSED CHANNEL CAPACITY.—A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial programming of an educational or informational nature.

(3) PRICES, TERMS, AND CONDITIONS; EDITORIAL CONTROL.—A provider of direct broadcast satellite service shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions, as determined by the Commission under paragraph (4). The provider of direct broadcast satellite service shall not exercise any editorial control over any video programming provided pursuant to this subsection.

(4) LIMITATIONS.—In determining reasonable prices under paragraph (3)—

(A) the Commission shall take into account the nonprofit character of the programming provider and any Federal funds used to support such programming;

(B) the Commission shall not permit such prices to exceed, for any channel made available under this subsection, 50 percent of the total direct costs of making such channel available; and

(C) in the calculation of total direct costs, the Commission shall exclude—

(i) marketing costs, general administrative costs, and similar overhead costs of the provider of direct broadcast satellite service; and

(ii) the revenue that such provider might have obtained by making such channel available to a commercial provider of video programming.

(5) DEFINITIONS.—For purposes of this subsection—

(A) The term "provider of direct broadcast satellite service" means—

(i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or

(ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.

(B) The term "national educational programming supplier" includes any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions.

(c) ALASKA AND HAWAII OBLIGATIONS.—

(1) IN GENERAL.—Each satellite carrier shall, to the extent technically feasible given the carrier's satellite constellation in use, provide a comparable consumer product to subscribers in Alaska and Hawaii at prices and terms comparable to those made available to subscribers in the contiguous United States.

(2) CONDITIONS ON NEW LICENSES.—

(A) IN GENERAL.—Before the Commission grants a license for a new satellite used for service in the contiguous United States to a satellite carrier, it shall ensure that, to the extent technically feasible, the following minimum conditions are met:

(i) If the satellite is used for direct-to home video services, the satellite shall be—

(I) capable of providing services to consumers in the cities of Anchorage, Fairbanks, and Juneau, Alaska, using signal power levels of at least 45 dBW effective isotropic radiated power; and

(II) capable of providing services to consumers in the islands of Oahu, Maui, Kauai, Molokai, and Hawaii, Hawaii, using signal power levels of at least 46 dBW effective isotropic radiated power.

(ii) If the satellite is used for any other direct-to-consumer service—

(I) with respect to services offered on beams covering substantially the entire contiguous United States, the carrier must make best efforts to ensure that the effective isotropic radiated power of the satellite on the downlink and, where applicable, the efficiency of the satellite receive antenna (G/T) can allow the use of a commercially available antenna in Alaska and Hawaii with a gain that is no more than 4 dB greater than that used to provide the service in the contiguous United States; and

(II) with respect to services offered over spot beams covering portions of the contiguous United States, the carrier must make best efforts to ensure that the effective isotropic radiated power of the satellite on the downlink and, where applicable, the efficiency of the satellite receive antenna (G/T) shall allow the use of the same antenna in Alaska

and Hawaii as provided in the contiguous United States for the service.

(B) TECHNICAL FEASIBILITY.—It is deemed not technically feasible for a satellite with a look angle to any area of less than 8.25 degrees to provide service to such area at the signal power levels described in subparagraph (A).

(3) SATELLITE CARRIER DEFINED.—In this subsection, the term "satellite carrier" means an entity that uses the facilities of a satellite in the Fixed-Satellite Service, the Direct Broadcast Satellite service, the Broadcast Satellite Service, the Mobile-Satellite Service, or the Digital Audio Radio Service that is licensed by the Commission under part 25 of title 47, Code of Federal Regulations, or is licensed or authorized by a foreign government.

SEC. 336. BROADCAST SPECTRUM FLEXIBILITY.

[47 U.S.C. 336]

(a) COMMISSION ACTION.—If the Commission determines to issue additional licenses for advanced television services, the Commission—

(1) should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both); and

(2) shall adopt regulations that allow the holders of such licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

(b) CONTENTS OF REGULATIONS.—In prescribing the regulations required by subsection (a), the Commission shall—

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

(3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person, except that no ancillary or supplementary service shall have any rights to carriage under ❚section 614 or 615 or be deemed a multichannel video programming distributor for purposes of section 628;❚ *section 614 or 615;*

(4) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, and may adopt regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(c) RECOVERY OF LICENSE.—If the Commission grants a license for advanced television services to a person that, as of the date of such issuance, is licensed to operate a television broadcast station or holds a permit to construct such a station (or both), the Commission shall, as a condition of such license, require that either the additional license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment (or both) pursuant to Commission regulation.

(d) PUBLIC INTEREST REQUIREMENT.—Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity. In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest. Any violation of the Commission rules applicable to ancillary or supplementary services shall reflect upon the licensee's qualifications for renewal of its license.

(e) FEES.—

(1) SERVICES TO WHICH FEES APPLY.—If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency—

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2).

(2) COLLECTION OF FEES.—The program required by paragraph (1) shall—

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this Act and the Commission's regulations thereunder; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

(3) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), all proceeds obtained pursuant to the regula-

tions required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

(4) REPORT.—Within 5 years after the date of enactment of the Telecommunications Act of 1996, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

(f) PRESERVATION OF LOW-POWER COMMUNITY TELEVISION BROADCASTING.—

(1) CREATION OF CLASS A LICENSES.—

(A) RULEMAKING REQUIRED.—Within 120 days after the date of the enactment of the Community Broadcasters Protection Act of 1999, the Commission shall prescribe regulations to establish a class A television license to be available to licensees of qualifying low-power television stations. Such regulations shall provide that—

(i) the license shall be subject to the same license terms and renewal standards as the licenses for full-power television stations except as provided in this subsection; and

(ii) each such class A licensee shall be accorded primary status as a television broadcaster as long as the station continues to meet the requirements for a qualifying low-power station in paragraph (2).

(B) NOTICE TO AND CERTIFICATION BY LICENSEES.—Within 30 days after the date of the enactment of the Community Broadcasters Protection Act of 1999, the Commission shall send a notice to the licensees of all low-power televisions licenses that describes the requirements for class A designation. Within 60 days after such date of enactment, licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. Absent a material deficiency, the Commission shall grant certification of eligibility to apply for class A status.

(C) APPLICATION FOR AND AWARD OF LICENSES.—Consistent with the requirements set forth in paragraph (2)(A) of this subsection, a licensee may submit an application for class A designation under this paragraph within 30 days after final regulations are adopted under subparagraph (A) of this paragraph. Except as provided in paragraphs (6) and (7), the Commission shall, within 30 days after receipt

of an application of a licensee of a qualifying low-power television station that is acceptable for filing, award such a class A television station license to such licensee.

(D) RESOLUTION OF TECHNICAL PROBLEMS.—The Commission shall act to preserve the service areas of low-power television licensees pending the final resolution of a class A application. If, after granting certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary—

(i) to ensure replication of the full-power digital television applicant's service area, as provided for in sections 73.622 and 73.623 of the Commission's regulations (47 CFR 73.622, 73.623); and

(ii) to permit maximization of a full-power digital television applicant's service area consistent with such sections 73.622 and 73.623,

if such applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000. Any such applicant shall comply with all applicable Commission rules regarding the construction of digital television facilities.

(E) CHANGE APPLICATIONS.—If a station that is awarded a construction permit to maximize or significantly enhance its digital television service area, later files a change application to reduce its digital television service area, the protected contour of that station shall be reduced in accordance with such change modification.

(2) QUALIFYING LOW-POWER TELEVISION STATIONS.—For purposes of this subsection, a station is a qualifying low-power television station if—

(A)(i) during the 90 days preceding the date of the enactment of the Community Broadcasters Protection Act of 1999—

(I) such station broadcast a minimum of 18 hours per day;

(II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and

(III) such station was in compliance with the Commission's requirements applicable to low-power television stations; and

(ii) from and after the date of its application for a class A license, the station is in compliance with the Commission's operating rules for full-power television stations; or

(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the

station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.

(3) COMMON OWNERSHIP.—No low-power television station authorized as of the date of the enactment of the Community Broadcasters Protection Act of 1999 shall be disqualified for a class A license based on common ownership with any other medium of mass communication.

(4) ISSUANCE OF LICENSES FOR ADVANCED TELEVISION SERVICES TO TELEVISION TRANSLATOR STATIONS AND QUALIFYING LOW-POWER TELEVISION STATIONS.—The Commission is not required to issue any additional license for advanced television services to the licensee of a class A television station under this subsection, or to any licensee of any television translator station, but shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application. Such new license or the original license of the applicant shall be forfeited after the end of the digital television service transition period, as determined by the Commission. A licensee of a low-power television station or television translator station may, at the option of licensee, elect to convert to the provision of advanced television services on its analog channel, but shall not be required to convert to digital operation until the end of such transition period.

(5) NO PREEMPTION OF SECTION 337.—Nothing in this subsection preempts or otherwise affects section 337 of this Act.

(6) INTERIM QUALIFICATION.—

(A) STATIONS OPERATING WITHIN CERTAIN BANDWIDTH.—The Commission may not grant a class A license to a low-power television station for operation between 698 and 806 megahertz, but the Commission shall provide to low-power television stations assigned to and temporarily operating in that bandwidth the opportunity to meet the qualification requirements for a class A license. If such a qualified applicant for a class A license is assigned a channel within the core spectrum (as such term is defined in MM Docket No. 87–286, February 17, 1998), the Commission shall issue a class A license simultaneously with the assignment of such channel.

(B) CERTAIN CHANNELS OFF-LIMITS.—The Commission may not grant under this subsection a class A license to a low-power television station operating on a channel within the core spectrum that includes any of the 175 additional channels referenced in paragraph 45 of its February 23, 1998, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order (MM Docket No. 87–268). Within 18 months after the date of the enactment of the Community Broadcasters Protection Act of 1999, the Commission shall identify by channel, location, and applicable technical parameters those 175 channels.

(7) NO INTERFERENCE REQUIREMENT.—The Commission may not grant a class A license, nor approve a modification of a

class A license, unless the applicant or licensee shows that the class A station for which the license or modification is sought will not cause—

(A) interference within—

(i) the predicted Grade B contour (as of the date of the enactment of the Community Broadcasters Protection Act of 1999, or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date) of any television station transmitting in analog format; or

(ii)(I) the digital television service areas provided in the DTV Table of Allotments; (II) the areas protected in the Commission's digital television regulations (47 CFR 73.622(e) and (f)); (III) the digital television service areas of stations subsequently granted by the Commission prior to the filing of a class A application; and (IV) stations seeking to maximize power under the Commission's rules, if such station has complied with the notification requirements in paragraph (1)(D);

(B) interference within the protected contour of any low-power television station or low-power television translator station that—

(i) was licensed prior to the date on which the application for a class A license, or for the modification of such a license, was filed;

(ii) was authorized by construction permit prior to such date; or

(iii) had a pending application that was submitted prior to such date; or

(C) interference within the protected contour of 80 miles from the geographic center of the areas listed in section 22.625(b)(1) or 90.303 of the Commission's regulations (47 CFR 22.625(b)(1) and 90.303) for frequencies in—

(i) the 470-512 megahertz band identified in section 22.621 or 90.303 of such regulations; or

(ii) the 482-488 megahertz band in New York.

(8) PRIORITY FOR DISPLACED LOW-POWER STATIONS.—Low-power stations that are displaced by an application filed under this section shall have priority over other low-power stations in the assignment of available channels.

(g) EVALUATION.—Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include—

(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees.

(h) PROVISION OF DIGITAL SERVICE BY LOW-POWER TELEVISION STATIONS.—

(1) Within 60 days after receiving a request (made in such form and manner and containing such information as the Commission may require) under this subsection from a low-power television station to which this subsection applies, the Commission shall authorize the licensee or permittee of that station to provide digital data service subject to the requirements of this subsection as a pilot project to demonstrate the feasibility of using low-power television stations to provide high-speed wireless digital data service, including Internet access to unserved areas.

(2) The low-power television stations to which this subsection applies are as follows:

(A) KHLM LP, Houston, Texas.

(B) WTAM LP, Tampa, Florida.

(C) WWRJ LP, Jacksonville, Florida.

(D) WVBG LP, Albany, New York.

(E) KHHI LP, Honolulu, Hawaii.

(F) KPHE LP (K19DD), Phoenix, Arizona.

(G) K34FI, Bozeman, Montana.

(H) K65GZ, Bozeman, Montana.

(I) WXOB LP, Richmond, Virginia.

(J) WIIW LP, Nashville, Tennessee.

(K) A station and repeaters to be determined by the Federal Communications Commission for the sole purpose of providing service to communities in the Kenai Peninsula Borough and Matanuska Susitna Borough.

(L) WSPY LP, Plano, Illinois.

(M) W24AJ, Aurora, Illinois.

(3) Notwithstanding any requirement of section 553 of title 5, United States Code, the Commission shall promulgate regulations establishing the procedures, consistent with the requirements of paragraphs (4) and (5), governing the pilot projects for the provision of digital data services by certain low power television licensees within 120 days after the date of enactment of LPTV Digital Data Services Act. The regulations shall set forth—

(A) requirements as to the form, manner, and information required for submitting requests to the Commission to provide digital data service as a pilot project;

(B) procedures for testing interference to digital television receivers caused by any pilot project station or remote transmitter;

(C) procedures for terminating any pilot project station or remote transmitter or both that causes interference to any analog or digital full-power television stations, class A television station, television translators or any other users of the core television band;

(D) specifications for reports to be filed quarterly by each low power television licensee participating in a pilot project;

(E) procedures by which a low power television licensee participating in a pilot project shall notify television broadcast stations in the same market upon commencement of

digital data services and for ongoing coordination with local broadcasters during the test period; and

(F) procedures for the receipt and review of interference complaints on an expedited basis consistent with paragraph (5)(D).

(4) A low-power television station to which this subsection applies may not provide digital data service unless—

(A) the provision of that service, including any remote return-path transmission in the case of 2-way digital data service, does not cause any interference in violation of the Commission's existing rules, regarding interference caused by low power television stations to full-service analog or digital television stations, class A television stations, or television translator stations; and

(B) the station complies with the Commission's regulations governing safety, environmental, and sound engineering practices, and any other Commission regulation under paragraph (3) governing pilot program operations.

(5)(A) The Commission may limit the provision of digital data service by a low-power television station to which this subsection applies if the Commission finds that—

(i) the provision of 2-way digital data service by that station causes any interference that cannot otherwise be remedied; or

(ii) the provision of 1-way digital data service by that station causes any interference.

(B) The Commission shall grant any such station, upon application (made in such form and manner and containing such information as the Commission may require) by the licensee or permittee of that station, authority to move the station to another location, to modify its facilities to operate on a different channel, or to use booster or auxiliary transmitting locations, if the grant of authority will not cause interference to the allowable or protected service areas of full service digital television stations, National Television Standards Committee assignments, or television translator stations, and provided, however, no such authority shall be granted unless it is consistent with existing Commission regulations relating to the movement, modification, and use of non-class A low power television transmission facilities in order—

(i) to operate within television channels 2 through 51, inclusive; or

(ii) to demonstrate the utility of low-power television stations to provide high-speed 2-way wireless digital data service.

(C) The Commission shall require quarterly reports from each station authorized to provide digital data services under this subsection that include—

(i) information on the station's experience with interference complaints and the resolution thereof;

(ii) information on the station's market success in providing digital data service; and

(iii) such other information as the Commission may require in order to administer this subsection.

(D) The Commission shall resolve any complaints of interference with television reception caused by any station providing digital data service authorized under this subsection within 60 days after the complaint is received by the Commission.

(6) The Commission shall assess and collect from any low-power television station authorized to provide digital data service under this subsection an annual fee or other schedule or method of payment comparable to any fee imposed under the authority of this Act on providers of similar services. Amounts received by the Commission under this paragraph may be retained by the Commission as an offsetting collection to the extent necessary to cover the costs of developing and implementing the pilot program authorized by this subsection, and regulating and supervising the provision of digital data service by low-power television stations under this subsection. Amounts received by the Commission under this paragraph in excess of any amount retained under the preceding sentence shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(7) In this subsection, the term "digital data service" includes—

(A) digitally-based interactive broadcast service; and

(B) wireless Internet access, without regard to—

(i) whether such access is—

(I) provided on a one-way or a two-way basis;

(II) portable or fixed; or

(III) connected to the Internet via a band allocated to Interactive Video and Data Service; and

(ii) the technology employed in delivering such service, including the delivery of such service via multiple transmitters at multiple locations.

(8) Nothing in this subsection limits the authority of the Commission under any other provision of law.

(i) DEFINITIONS.—As used in this section:

(1) ADVANCED TELEVISION SERVICES.—The term "advanced television services" means television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled "Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service", MM Docket 87–268, adopted September 17, 1992, and successor proceedings.

(2) DESIGNATED FREQUENCIES.—The term "designated frequency" means each of the frequencies designated by the Commission for licenses for advanced television services.

(3) HIGH DEFINITION TELEVISION.—The term "high definition television" refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on the date of enactment of the Telecommunications Act of 1996, as further defined in the proceedings described in paragraph (1) of this subsection.

SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY SATELLITE CARRIERS.

[47 U.S.C. 338]

(a) CARRIAGE OBLIGATIONS.—

(1) IN GENERAL.—Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b).

(2) REMEDIES FOR FAILURE TO CARRY.—In addition to the remedies available to television broadcast stations under section 501(f) of title 17, United States Code, the Commission may use the Commission's authority under this Act to assure compliance with the obligations of this subsection, but in no instance shall a Commission enforcement proceeding be required as a predicate to the pursuit of a remedy available under such section 501(f).

(3) LOW POWER STATION CARRIAGE OPTIONAL.—No low power television station whose signals are provided under section 119(a)(14) of title 17, United States Code, shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to section 122 of such title, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.

(3) EFFECTIVE DATE.—No satellite carrier shall be required to carry local television broadcast stations under paragraph (1) until January 1, 2002.

(4) CARRIAGE OF SIGNALS OF LOCAL STATIONS IN CERTAIN MARKETS.—A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after such date of enactment retransmit the signals originating as digital signals of each such station. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the State shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after the date of enactment of that Act, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section

325(b), which shall take into account the schedule on which local television stations are made available to viewers in such State.

(b) GOOD SIGNAL REQUIRED.—

(1) COSTS.—A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) REGULATIONS.—The regulations issued under subsection (g) shall set forth the obligations necessary to carry out this subsection.

(c) DUPLICATION NOT REQUIRED.—

(1) COMMERCIAL STATIONS.—Notwithstanding subsection (a)(1), a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) NONCOMMERCIAL STATIONS.—The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulations shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615.

(d) CHANNEL POSITIONING.—No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

(e) COMPENSATION FOR CARRIAGE.—A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.

(f) REMEDIES.—

(1) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section, such station shall notify the carrier, in writing,

of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations. A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(2) OPPORTUNITY TO RESPOND.—The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint.

(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.—

(1) SINGLE DISH.—Each satellite carrier that retransmits the analog signals of local television broadcast stations in a local market shall retransmit such analog signals in such market by means of a single reception antenna and associated equipment.

(2) EXCEPTION.—If the carrier retransmits signals in the digital television service, the carrier shall retransmit such digital signals in such market by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used for analog television service signals.

(3) EFFECTIVE DATE.—The requirements of paragraphs (1) and (2) of this subsection shall apply on and after 18 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

(4) NOTICE OF DISRUPTIONS.—A carrier that is providing signals of a local television broadcast station in a local market under this section on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 shall, not later than 15 months after such date of enactment, provide to the licensees for such stations and the carrier's subscribers in such local market a notice that displays prominently and conspicuously a clear statement of—

(A) any reallocation of signals between different reception antennas and associated equipment that the carrier

intends to make in order to comply with the requirements of this subsection;

(B) the need, if any, for subscribers to obtain an additional reception antenna and associated equipment to receive such signals; and

(C) any cessation of carriage or other material change in the carriage of signals as a consequence of the requirements of this paragraph.

(h) ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.—

(1) NOTICES TO AND ELECTIONS BY SUBSCRIBERS CONCERNING GRANDFATHERED SIGNALS.—Any carrier that provides a distant signal of a network station to a subscriber pursuant section 339(a)(2)(A) shall—

(A) within 60 days after the local signal of a network station of the same television network is available pursuant to section 338, or within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, whichever is later, send a notice to the subscriber—

(i) offering to substitute the local network signal for the duplicating distant network signal; and

(ii) informing the subscriber that, if the subscriber fails to respond in 60 days, the subscriber will lose the distant network signal but will be permitted to subscribe to the local network signal; and

(B) if the subscriber—

(i) elects to substitute such local network signal within such 60 days, switch such subscriber to such local network signal within 10 days after the end of such 60-day period; or

(ii) fails to respond within such 60 days, terminate the distant network signal within 10 days after the end of such 60-day period.

(2) NOTICE TO STATION LICENSEES OF COMMENCEMENT OF LOCAL-INTO-LOCAL SERVICE.—

(A) NOTICE REQUIRED.—Within 180 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph.

(B) CONTENTS OF COMMENCEMENT NOTICE.—The notice required by such regulations shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage—

(i) of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

(ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

(iii) that such licensee has 30 days from the date of the receipt of such notice to make such election; and

(iv) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

(C) TRANSMISSION OF NOTICES.—Such regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

(i) PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.—

(1) NOTICE.—At the time of entering into an agreement to provide any satellite service or other service to a subscriber and at least once a year thereafter, a satellite carrier shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the satellite carrier;

(D) the times and place at which the subscriber may have access to such information in accordance with paragraph (5); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a satellite carrier and the right of the subscriber under paragraphs (7) and (9) to enforce such limitations.In the case of subscribers who have entered into such an agreement before the effective date of this subsection, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) DEFINITIONS.—For purposes of this subsection, other than paragraph (9)—

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a satellite carrier that are used in the provision of satellite service; and

(C) the term "satellite carrier" includes, in addition to persons within the definition of satellite carrier, any person who—

(i) is owned or controlled by, or under common ownership or control with, a satellite carrier; and

(ii) provides any wire or radio communications service.

(3) PROHIBITIONS.—

(A) CONSENT TO COLLECTION.—Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(B) EXCEPTIONS.—A satellite carrier may use such facilities to collect such information in order to—

(i) obtain information necessary to render a satellite service or other service provided by the satellite carrier to the subscriber; or

(ii) detect unauthorized reception of satellite communications.

(4) DISCLOSURE.—

(A) CONSENT TO DISCLOSURE.—Except as provided in subparagraph (B), a satellite carrier shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or satellite carrier.

(B) EXCEPTIONS.—A satellite carrier may disclose such information if the disclosure is—

(i) necessary to render, or conduct a legitimate business activity related to, a satellite service or other service provided by the satellite carrier to the subscriber;

(ii) subject to paragraph (9), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(iii) a disclosure of the names and addresses of subscribers to any satellite service or other service, if—

(I) the satellite carrier has provided the subscriber the opportunity to prohibit or limit such disclosure; and

(II) the disclosure does not reveal, directly or indirectly, the—

(aa) extent of any viewing or other use by the subscriber of a satellite service or other service provided by the satellite carrier; or

(bb) the nature of any transaction made by the subscriber over any facilities used by the satellite carrier; or

(iv) to a government entity as authorized under chapter 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing satellite subscriber selection of video programming from a satellite carrier.

(5) ACCESS BY SUBSCRIBER.—A satellite subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a satellite carrier. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such satellite carrier. A satellite subscriber shall be provided reasonable opportunity to correct any error in such information.

(6) DESTRUCTION OF INFORMATION.—A satellite carrier shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under paragraph (5) or pursuant to a court order.

(7) PENALTIES.—Any person aggrieved by any act of a satellite carrier in violation of this section may bring a civil action in a United States district court. The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.The remedy provided by this subsection shall be in addition to any other lawful remedy available to a satellite subscriber.

(8) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to prohibit any State from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(9) COURT ORDERS.—Except as provided in paragraph (4)(B)(iv), a governmental entity may obtain personally identifiable information concerning a satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(B) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

(j) REGULATIONS BY COMMISSION.—Within 1 year after the date of the enactment of this section, the Commission shall issue regulations implementing this section following a rulemaking proceeding. The regulations prescribed under this section shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(3) and (4) and 615(g)(1) and (2).

(k) DEFINITIONS.—As used in this section:

(1) DISTRIBUTOR.—The term "distributor" means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

(2) LOCAL RECEIVE FACILITY.—The term "local receive facility" means the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(3) LOCAL MARKET.—The term "local market" has the meaning given that term under section 122(j) of title 17, United States Code.

(4) LOW POWER TELEVISION STATION.—The term "low power television station" means a low power television station as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term "low power television station" includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

(5) SATELLITE CARRIER.—The term "satellite carrier" has the meaning given such term under section 119(d) of title 17, United States Code.

(6) SECONDARY TRANSMISSION.—The term "secondary transmission" has the meaning given such term in section 119(d) of title 17, United States Code.

(7) SUBSCRIBER.—The term "subscriber" has the meaning given that term under section 122(j) of title 17, United States Code.

(8) TELEVISION BROADCAST STATION.—The term "television broadcast station" has the meaning given such term in section 325(b)(7).

(l) SPECIFIC CARRIAGE OBLIGATIONS AFTER DIGITAL TRANSITION.—

(1) DIGITAL VIDEO SIGNAL.—With respect to any television broadcast station that is transmitting broadcast programming exclusively in the digital television service in a local market in the United States, a satellite carrier carrying the digital signal of any other television broadcast station in that local market shall carry the station's primary video required to be carried and program-related material without material degradation, if the licensee for that station relies on this section to obtain carriage of the station's video signal and program-related material on that satellite carrier's system in that market.

(2) FORMATTING OF PRIMARY VIDEO.—A satellite carrier shall offer the primary video and program-related material of a local television station described in paragraph (1) in the digital format transmitted by the station if the satellite carrier carries the primary video of any other television broadcast station in that local market in the same digital format.

(3) MULTIPLE FORMATS PERMITTED.—A satellite carrier may offer the primary video and program-related material of a local television broadcast station described in paragraph (1) in any analog or digital format or formats, whether or not doing so requires conversion from the format transmitted by the local television broadcast station, so long as—

(A) the satellite carrier offers the primary video and program-related material in the converted analog or digital format or formats without material degradation; and

(B) also offers the primary video and program-related material in the manner or manners required by this paragraph.

(4) TRANSITIONAL CONVERSIONS.—Notwithstanding any requirement in paragraph (1) or (2) to carry the primary video and program-related material in the digital format transmitted by the local television station, but subject to the prohibition on material degradation, until February 17, 2014, a satellite carrier—

(A) shall offer the primary video and program-related material of any local television broadcast station required to be carried under paragraph (1) in the format or formats necessary for such primary video and program-related material to be viewable on analog and digital televisions; and

(B) may convert the primary video and program-related material to standard-definition digital format in lieu of offering it in the digital format transmitted by the local television station.

(5) LOCATION AND METHOD OF CONVERSION.—A satellite carrier may perform any conversion permitted or required by this paragraph at any location, from the local receive facility to the customer premises, inclusive.

(6) CONVERSIONS NOT TREATED AS DEGRADATION.—Any conversion permitted or required by this paragraph shall not, by itself, be treated as a material degradation.

(7) CARRIAGE OF PROGRAM-RELATED MATERIAL.—The obligation to carry program-related material under this paragraph is effective only to the extent technically feasible.

(8) DEFINITION OF STANDARD-DEFINITION FORMAT.—For purposes of this subsection, the primary video shall be in standard definition digital format if such primary video meets the criteria for such format specified in the standard recognized by the Commission in section 73.682 of its rules (47 C.F.R. 73.682) or a successor regulation.

(9) MATERIAL DEGRADATION.—For purposes of this subsection, transmission of a digital signal over a satellite system in a compressed bitstream shall not be considered material degradation as long as such compression does not materially affect the picture quality the consumer receives.

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SEC. 342. PROTECTION OF DIGITAL AUDIO BROADCASTING CONTENT.

(a) IN GENERAL.—Subject to section 454(d)(2) of the Digital Content Protection Act of 2006, the Commission may promulgate regulations governing the distribution of audio content with respect to—

(1) digital radio broadcasts;

(2) satellite digital radio transmissions; and

(3) digital radios.

(b) MONITORING ORGANIZATIONS.—

(1) IN GENERAL.—The Commission shall ensure that a performing rights society or a mechanical rights organization, or any entity acting on behalf of such a society or organization, is granted a license for free or for a de minimis fee to cover only the reasonable costs to the licensor of providing the license, and

on reasonable, nondiscriminatory terms and conditions, to access and retransmit as necessary any content contained in such transmissions protected by content protection or similar technologies, if—

(A) the license is used to carry out the activities of such society, organization, or entity in monitoring the public performance or other uses of copyrighted works; and

(B) such society, organization, or entity employs reasonable methods to protect any such content accessed from further distribution.

(2) PROTECTED ACTIVITIES.—Nothing shall preclude or prevent a performing rights organization, a mechanical rights organization, a monitoring service, a measuring service, or any entity owned in whole or in part by, or acting on behalf of, such an organization or service, from monitoring or measuring public performances or other uses of copyrighted works, advertisements, or announcements contained in performances or other uses, or other information concerning the content or audience of such performances or other uses.

(3) ALTERNATIVE LICENSING LANGUAGE.—The Commission may require that any such organization, service, or entity be given a license on either a gratuitous basis or for a de minimis fee to cover only the reasonable costs to the licensor of providing the license, and on reasonable, nondiscriminatory terms, to access, record, and retransmit as necessary any content contained in any such performance or use protected by content protection or similar technology, if—

(A) the license is used for carrying out the activities of such organizations, services, or entities in monitoring or measuring the public performance or other use of copyrighted works, advertisements, or announcements, or other information concerning the content or audience of such performances or uses; and

(B) the organizations, services, or entities employ reasonable methods to protect any such content accessed from further distribution.

SEC. 343. ELIGIBLE BROADCAST TELEVISION SPECTRUM MADE AVAILABLE FOR WIRELESS USE.

(a) IN GENERAL.—Effective 270 days after the date of enactment of the WIN Act of 2006, a certified unlicensed device may use eligible broadcast television frequencies in a manner that protects licensees from harmful interference.

(b) COMMISSION TO FACILITATE USE.—Within 270 days after the date of enactment of that Act, the Commission shall adopt technical and device rules in ET Docket No. 04–186 to facilitate the efficient use of eligible broadcast television frequencies by certified unlicensed devices, which shall include rules and procedures—

(1) to protect licensees from harmful interference from certified unlicensed devices;

(2) to require certification of unlicensed devices designed to be operated in the eligible broadcast television frequencies that includes testing, which may include testing in an independent laboratory certified by the Commission and field testing, that demonstrates—

(A) compliance with the requirements set forth pursuant to this paragraph; and

(B) that such compliance effectively protects licensees from harmful interference;

(3) to require manufacturers of such devices to include a means of disabling or modifying the device remotely if the Commission determines that certain certified unlicensed devices may cause harmful interference to licensees;

(4) to act immediately on any bona fide complaints from licensees that a certified unlicensed device causes harmful interference including verification, in the field, of actual harmful interference; and

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

(c) DEFINITIONS.—In this section:

(1) CERTIFIED UNLICENSED DEVICE.—The term "certified unlicensed device" means a device certified under subsection (b)(2).

(2) ELIGIBLE BROADCAST TELEVISION FREQUENCIES.—The term "eligible broadcast television frequencies" means the following frequencies:

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

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

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

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

(E) All frequencies between 614 and 698 megaHertz, inclusive.

(3) LICENSEE.—The term "licensee" means a licensee, as defined in section 3(24), that is operating in a manner that is not inconsistent with its license.

SEC. 344. RADIO SPECTRUM REVIEW.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of the Rural Wireless and Broadband Service Act of 2006, and every 5 years thereafter, the Federal Communications Commission and the National Telecommunications and Information Administration shall—

(1) conduct a band-by-band analysis of the spectrum managed by each such agency; and

(2) report to the Congress any such bands identified, in the determination of each such agency, as not being utilized in an effective or efficient manner.

(b) AGENCY AUTHORITY.—

(1) COLLECTION OF INFORMATION.—In conducting the analysis required under subsection (a)(1), the Federal Communications Commission and the National Telecommunications and Information Administration may require licensees and other spectrum users to provide information regarding spectrum usage.

(2) EXEMPTION FROM PAPERWORK REDUCTION ACT.—The collection of any information required under paragraph (1) shall be exempt from the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

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TITLE V—PENAL PROVISIONS; FORFEITURES

SEC. 503. FORFEITURES.

[47 U.S.C. 503]

(a) REBATES AND OFFSETS.—Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, any such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this Act, shall in addition to any other penalty provided by this Act forfeit to the United States a sum of money three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(b) ACTIVITIES CONSTITUTING VIOLATIONS AUTHORIZING IMPOSITION OF FORFEITURE PENALTY; AMOUNT OF PENALTY; PROCEDURES APPLICABLE; PERSONS SUBJECT TO PENALTY; LIABILITY EXEMPTION PERIOD.—

(1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or 508(a) of this Act; or

(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall

not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section 506 of this Act.

(2)(A) If the violator is (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument or authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $250,000 for any single act or failure to act described in paragraph (1) of this subsection.

(B) If the violator is a common carrier subject to the provisions of this Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed **[**$100,000**]** *$1,000,000* for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of **[**$1,000,000**]** *$10,000,000* for any single act or failure to act described in paragraph (1) of this subsection.

(C) Notwithstanding subparagraph (A), if the violator is—

(i) (I) a broadcast station licensee or permittee; or

(II) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission; and

(ii) determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane language, the amount of any forfeiture penalty determined under this subsection shall not exceed $325,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $3,000,000 for any single act or failure to act.

(D) In any case not covered in subparagraph (A), (B), or (C), the amount of any forfeiture penalty determined under this subsection shall not exceed $10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $75,000 for any single act or failure to act described in paragraph (1) of this subsection.

(E) The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection

after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5, United States Code. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a).

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this Act.

(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license,

permit, certificate, or other authorization is required, or is a cable television system operator, if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e), or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

(A) such person holds a broadcast station license issued under title III of this Act and if the violation charged occurred—

(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

(ii) prior to the date of commencement of the current term of such license,whichever is earlier; **[**or**]**

(B) such person is a common carrier subject to the provisions of this Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission and if the violation charged occurred more than 3 years prior to the date of issuance of the required notice or notice of apparent liability; or

[(B)**]** *(C)* such person does not hold a broadcast station license issued under title III of this Act and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

For purposes of this paragraph, "date of commencement of the current term of such license" means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

(7) APPLICATION TO VIDEO SERVICE PROVIDERS.—In this section the terms "cable television operator" and "cable television system operator" include a video service provider (as defined in section 602 of this Act).

(8) INDEPENDENT NETWORK AFFILIATES.—

(A) IN GENERAL.—No forfeiture penalty shall be determined or imposed under paragraph (2) of this subsection against an independent network affiliate for a violation of any section of title 18, United States Code, referred to in paragraph (1)(D) with respect to network-originated programming—

(i) that the affiliate has not been afforded the reasonable opportunity to preview prior to its scheduled air time; or

(ii) for which the network has failed to advise the affiliate prior to the scheduled air time that the programming contains content that could be in violation of any such section.

(B) INDEPENDENT NETWORK AFFILIATE DEFINED.—In this paragraph, the term "independent network affiliate" means a television broadcast station licensee that is neither owned nor controlled by a television network (as defined in section 340(d)(5) of this Act.

TITLE VI—[CABLE COMMUNICATIONS] *VIDEO SERVICES*

PART I—GENERAL PROVISIONS

SEC. 601. PURPOSES.

[47 U.S.C. 521]

The purposes of this title are to—

(1) establish a national policy concerning [cable] *video service* communications;

(2) establish franchise procedures and standards which encourage the growth and development of [cable] *video service* systems and which assure that [cable] *video service* systems are responsive to the needs and interests of the local community;

(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of [cable] *video service* systems;

(4) assure that [cable] *video service* communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

(5) establish an orderly process for franchise renewal which protects [cable operators] *video service providers* against unfair denials of renewal where the [operator's] *provider's* past performance and proposal for future performance meet the standards established by this title; and

(6) promote competition in [cable] *video service* communications and minimize unnecessary regulation that would impose an undue economic burden on [cable] *video service* systems.

SEC. 602. DEFINITIONS.

[47 U.S.C. 522]

For purposes of this [title—] *title:*

(1) *ACTIVATED CHANNELS.*—[the] *The* term "activated channels" means those channels engineered at the headend of a [cable system] *video service system* for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental [use;] *use.*

(2) *AFFILIATE.*—[the] *The* term "affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such [person;] *person.*

(3) *BASIC CABLE SERVICE.*—[the] *The* term "basic cable service" means any service tier which includes the retransmission of local television broadcast [signals;] *signals.*

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

(5) *CABLE OPERATOR.*—[the] *The* term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable [system;] *system.*

(6) *CABLE SERVICE.*—[the] *The* term "cable service" means—

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

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

(7) *CABLE SYSTEM.*—[the] *The* term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility [systems;] *systems.*

(8) *FEDERAL AGENCY.*—[the] *The* term "Federal agency" means any agency of the United States, including the [Commission;] *Commission.*

(9) *FRANCHISE.*—[the] *The* term "franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a [cable system] *video service [system;] system.*

(10) *FRANCHISING AUTHORITY.*—[the] *The* term "franchising authority" means any governmental entity empowered by Federal, State, or local law to grant a [franchise;] *franchise.*

(11) *GRADE B CONTOUR.*—[the] *The* term "grade B contour" means the field strength of a television broadcast station computed in accordance with regulations promulgated by the [Commission;] *Commission.*

(12) HEADEND.—The term "headend" means the headend of a cable system or its equivalent as determined by the Commission.

[(12)] *(13) INTERACTIVE ON-DEMAND SERVICES.*—[the] *The* term "interactive on-demand services" means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming [provider;] *provider.*

(14) INSTITUTIONAL NETWORK.—The term "institutional network" means a communication network constructed by a cable operator that is generally available only to subscribers who are not residential subscribers.

[(13)] *(15) MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR.*—[the] *The* term "multichannel video programming distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video [programming;] *programming.*

[(14)] *(16) OTHER PROGRAMMING SERVICE.*—[the] *The* term "other programming service" means information that a [cable operator] *video service provider* makes available to all subscribers [generally;] *generally.*

[(15)] *(17) PERSON.*—[the] *The* term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental [entity;] *entity.*

[(16)] *(18) PUBLIC, EDUCATIONAL, OR GOVERNMENTAL ACCESS FACILITIES.*—[the] *The* term "public, educational, or governmental access facilities" means—

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel [capacity;] *capacity.*

(19) SATELLITE CARRIER.—The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Commission and operates in the Fixed-Satellite Service under part 25 of title 47, Code of Federal Regulations, or the Direct Broadcast Satellite Service under part 100 of title 47, Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under this Act, for purposes other than for private home viewing.

[(17)] *(20) SERVICE TIER.*—[the] *The* term "service tier" means a category of [cable service] *video service* or other services provided by a [cable operator] *video service provider* and for which a separate rate is charged by the [cable operator] *video service [provider;] provider.*

[(18)] *(21) STATE.*—[the] *The* term "State" means any State, or political subdivision, or agency [thereof;] *thereof.*

[(19)] *(22) USABLE ACTIVATED CHANNELS.*—[the] *The* term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the [Commission; and] *Commission.*

[(20)] *(23) VIDEO PROGRAMMING.*—[the] *The* term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(24) VIDEO SERVICE.—The term "video service" means—

(A) the transmission to subscribers of—

(i) video programming;

(ii) interactive on-demand service; or

(iii) other programming service; and

(B) subscriber interaction, if any, required for the selection or use of such video programming, interactive on-demand service, or other programming service regardless of the transmission technology used and regardless of how the subscriber interacts with the service.

(25) VIDEO SERVICE PROVIDER.—The term "video service provider"—

(A) means a facilities-based (as determined by the Commission) provider of video service that utilizes a public right-of-way in the provision of such service (including cable operators and providers offering open video systems under section 653), regardless of the transmission technology used and regardless of how the subscriber interacts with the service; but

(B) does not include any person to the extent that the person is providing—

(i) satellite service, including if such service is bundled with, or offered in conjunction with, an Internet access service or other broadband capability;

(ii) video programming using radio communication directly to the recipient's premises; or

(iii) service via commercial mobile service (as defined in section 332(d)).

SEC. 603. FRANCHISE APPLICATIONS.

(a) IN GENERAL.—

(1) EXPEDITED PROCESS.—Except as otherwise provided in this subsection, a franchising authority shall grant a franchise to provide video service within its franchise area to a video service provider within 90 calendar days after receiving a franchise application that is complete from the video service provider except for—

(A) the franchise fee percentage, as provided by section 622(b)(1);

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

(C) any fee percentage that may be assessed under section 622(b)(4); and

(D) the point of contact for the franchising authority.

(2) STANDARDIZED APPLICATION FORM.—A video service provider shall use the standard franchise application form promulgated by the Commission under section 612.

(3) RESPONSIBILITIES OF FRANCHISING AUTHORITY—After receiving a franchise application under paragraph (1), a franchising authority shall—

(A) publish public notice of the application within 15 days after receiving a complete application from a video service provider if public notice is required by State or local law; and

(B) complete and return the application form by providing the information described in subparagraphs (A), (B), (C), and (D) of paragraph (1) in a manner that is consistent with the requirements of this title within 90 calendar days after the date on which it was received.

(4) ACCEPTANCE OF TERMS.—A franchising agreement shall take effect 15 calendar days after the date that the completed franchise application is received by the applicant under paragraph (3)(B) unless the applicant notifies the franchising authority within that 15-day period that the terms offered are not accepted.

(5) EXCEPTION.—This subsection does not require a franchising authority to approve or complete an application from a video service provider if a franchise held by that provider has been revoked under section 625(b) by the franchising authority.

(b) DEEMED APPROVAL.—Except as provided in subsection (a)(5), if a franchising authority fails to act on a franchise application that meets the requirements of this title within the 90-day period described in subsection (a)(3)(B), the franchise application shall be deemed granted—

(1) effective on the 91st day after the franchising authority received the application;

(2) for a term of 15 years;

(3) with—

(A) the same percentage of gross revenue paid by the cable operator with the most subscribers offering cable service in the franchise area; or

(B) if there is no cable operator offering cable service in the franchise area, 5 percent of gross revenue; and

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

(c) PROCEDURE.—If an application is not granted within the 90-day period described in subsection (a)(3)(B) because of subsection (a)(5), the applicant may avail itself of the procedures in section 635 of this Act.

SEC. 604. NO EFFECT ON STATE LAWS OF GENERAL APPLICABILITY.

Nothing in this title is intended to affect State or local laws of general applicability, except to the extent that such laws are inconsistent with this title.

SEC. 605. DIRECT BROADCAST SATELLITE SERVICE.

No State or local government may regulate direct broadcast satellite services (as that term is used in section 335 of this Act). This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a State, to the extent otherwise permissible, and shall not preempt State or local laws of general applicability.

[PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS]

PART II—USE OF VIDEO SERVICES; RESTRICTIONS

[SEC. 611. CABLE CHANNELS FOR PUBLIC, EDUCATIONAL, OR GOVERNMENTAL USE.

[47 U.S.C. 531]

[(a) A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

[(b) A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

[(c) A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b).

[(d) In the case of any franchise under which channel capacity is designated under subsection (b), the franchising authority shall prescribe—

[(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

[(2) rules and procedures under which such permitted use shall cease.

[(e) Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program

or portion of a public access program which contains obscenity, indecency, or nudity.

[(f) For purposes of this section, the term "institutional network" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.]

SEC. 611. CHANNELS FOR PUBLIC, EDUCATIONAL, OR GOVERNMENTAL USE.

(a) IN GENERAL.—A video service provider that obtains a franchise shall provide channel capacity for public, educational, or governmental use that is not less than the channel capacity required of the cable operator or video service provider with the greatest number of public, educational, or governmental use channels in the franchise area on the effective date of the franchise. If there is no other video service provider in the franchise area on the effective date of the franchise, the video service provider may be required to provide up to 3 channels.

(b) ADJUSTMENT.—Every 15 years after the commencement of a franchise granted after April 30, 2006, a franchising authority may require a video service provider to increase the channel capacity designated for public, educational, or governmental use, and the channel capacity designated for such use on any institutional networks required under subsection (a). The increase may not exceed the greater of—

(1) 1 channel; or

(2) 10 percent of the public, educational, or governmental channel capacity required of the video service provider before the required increase.

(c) EDITORIAL CONTROL.—Subject to section 624(a)(1), a video service provider shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, but a video service provider may refuse to transmit any public access program or portion of a public access program which contains obscenity.

(d) TRANSMISSION AND PRODUCTION OF PROGRAMMING.—

(1) PEG PROGRAMMING.—A video service provider shall ensure that all subscribers receive any public, educational, or governmental programming carried by the video service provider within the subscriber's franchise area.

(2) PRODUCTION RESPONSIBILITY.—The production of any programming provided under this subsection shall be the responsibility of the franchising authority.

(3) TRANSMISSION RESPONSIBILITY.—The video service provider shall be responsible for the transmission from the signal origination point (or points) of the programming, or from the point of interconnection with another video service provider already offering the public, educational, or governmental programming under paragraph (4), to the video service provider's subscribers, or any public, educational, or governmental programming produced by or for the franchising authority and carried by the video service provider pursuant to this section.

(4) INTERCONNECTION; COST-SHARING.—Unless 2 video service providers otherwise agree to the terms for interconnection and

cost sharing, such video service providers shall comply with regulations prescribed by the Commission providing for—

(A) the interconnection between 2 video service providers in a franchise area for transmission of public, educational, or governmental programming, without material degradation in signal quality or functionality; and

(B) the reasonable allocation of the costs of such interconnection between such video service providers.

(5) DISPLAY OF PROGRAM INFORMATION.—The video service provider shall display the program information for public, educational, or governmental programming in any print or electronic program guide in the same manner in which it displays program information for other video programming in the franchise area. The video service provider may not omit public, educational, or governmental programming from any navigational device, guide, or menu containing other video programming that is available to subscribers in the franchise area if the franchising authority provides such programming to the video service provider at a location, in the data format, and in sufficient time normally required for the programming to be displayed on such device, guide, or menu.

[SEC. 612. CABLE CHANNELS FOR COMMERCIAL USE.

[47 U.S.C. 532]

[(a) The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

[(b)(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

[(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

[(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

[(C) An operator of any cable system with more than 100 activated channels shall designate 15 percent of all such channels.

[(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on the date of the enactment of this title.

[(E) An operator of any cable system in operation on the date of the enactment of this title shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel ca-

pacity available for commercial use as such capacity becomes available until such time as the cable operator is in full compliance with this section.

[(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

[(3) A cable operator may not be required, as part of a request for proposals or as part of a proposal for renewal, subject to section 626, to designate channel capacity for any use (other than commercial use by unaffiliated persons under this section) except as provided in sections 611 and 637, but a cable operator may offer in a franchise, or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

[(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity is obtained, pursuant to a written agreement, by a person unaffiliated with the operator.

[(5) For the purposes of this section, the term "commercial use" means the provision of video programming, whether or not for profit.

[(6) Any channel capacity which has been designated for public, educational, or governmental use may not be considered as designated under this section for commercial use for purpose of this section.

[(c)(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) for commercial use, the cable operator shall establish, consistent with the purpose of this section and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

[(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

[(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on the date of the enactment of this title, if the provision of such programming is intended to avoid the purpose of this section.

[(4)(A) The Commission shall have the authority to—

[(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

[(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and

[(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

[(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii).

[(d) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection (c), and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

[(e)(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operator has violated this section shall be considered as sufficient for the showing necessary under this subsection. If the Commission finds that the channel capacity sought by such person has not been made available in accordance with this section, or that the price, terms, or conditions established by such system are unreasonable under subsection (c), the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c).

[(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources required by this section.

[(3) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

[(f) In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated pursuant to subsection (b) are reasonable and in good

faith unless shown by clear and convincing evidence to the contrary.

[(g) Notwithstanding sections 621(c) and 623(a), at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this title.

[(h) Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

[(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator . The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

[(2) For purposes of this subsection, the term "qualified minority programming source" means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term "minority" is defined in section 309(i)(3)(C)(ii).

[(3) For purposes of this subsection, the term "qualified educational programming source" means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding $15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

[(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615.

[(j)(1) Within 120 days following the date of the enactment of this subsection, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by—

[(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

[(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

[(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

[(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).]

SEC. 612. STANDARD FRANCHISE APPLICATION FORM.

(a) IN GENERAL.—Within 30 days after the date of enactment of the Video Competition and Savings for Consumers Act of 2006, the Commission shall promulgate a standard franchise application form, the use of which by franchising authorities shall be mandatory.

(b) COMPLIANCE COMMITMENTS.—The franchise application form shall include a statement, to be signed by the video service provider—

(1) that it agrees to comply with all applicable Federal and State statutes and regulations that are consistent with this title;

(2) that it agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of video service, including the police powers of the municipalities in which the service is delivered that are consistent with this title;

(3) geographically identifying the franchise area in which the provider intends to offer cable service pursuant to the standard franchise; and

(4) certifying that the information contained in the notice is accurate and correct and that the provider will immediately notify the franchise authority of any material changes in that information during the franchise term.

(c) PROVISIONS TO BE SUPPLIED.—The franchise application form shall include only the following blank spaces to be filled in by the video service provider and the franchising authority, as appropriate:

(1) The name of the video service provider.

(2) The name and business address of each director and principal executive officer.

(3) A point of contact for the video service provider.

(4) A point of contact for the franchising authority.

(5) The franchise fee percentage under section 622(b)(1).

(6) Any fee percentage that may be assessed under section 622(b)(4).

(7) The period during which the franchising agreement shall be in effect.

(8) The public, educational, or governmental capacity to be provided.

(9) The physical location of the headend.

(10) A description of the video service to be provided.

(11) Signatures.

(12) Dates for each signature.

SEC. 613. OWNERSHIP RESTRICTIONS.

[47 U.S.C. 533]

[(a) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system. The Commission—

[(1) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph;

[(2) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming; and

[(3) shall not apply the requirements of this subsection to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l).]

[Subsection (b) was repealed by section 302(b)(1) of the Telecommunications Act of 1996 (P.L. 104–104), 110 Stat. 124.]

[(c)] *(a)* The Commission may prescribe rules with respect to the ownership or control of [cable] *video service* systems by persons who own or control other media of mass communications which serve the same community served by a [cable] *video service* system.

[(d)] *(b)* Any State or franchising authority may not prohibit the ownership or control of a [cable] *video service* system by any person because of such person's ownership or control of any other media of mass communications or other media interests. Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a [cable] *video service* system in a jurisdiction by any person (1) because of such person's ownership or control of any other [cable] *video service* system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a [cable] *video service* system may eliminate or reduce competition in the delivery of [cable service] *video service* in such jurisdiction.

[(e)] *(c)*(1) Subject to paragraph (2), a State or franchising authority may hold any ownership interest in any [cable] *video service* system.

(2) Any State or franchising authority shall not exercise any editorial control regarding the content of any [cable service] *video service* on a [cable] *video service* system in which such govern-

mental entity holds ownership interest (other than programming on any channel designated for educational or governmental use), unless such control is exercised through an entity separate from the franchising authority.

[(f)] *(d)*(1) In order to enhance effective competition, the Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, conduct a proceeding—

(A) to prescribe rules and regulations establishing reasonable limits on the number of [cable] *video service* subscribers a person is authorized to reach through [cable] *video service* systems owned by such person, or in which such person has an attributable interest;

(B) to prescribe rules and regulations establishing reasonable limits on the number of channels on a [cable] *video service* system that can be occupied by a video programmer in which a [cable operator] *video service provider* has an attributable interest; and

(C) to consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of video programming.

(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives—

(A) ensure that no [cable operator] *video service provider* or group of [cable operators] *video service providers* can unfairly impede, either because of the size of any individual [operator] *provider* or because of joint actions by a group of [operators] *providers* of sufficient size, the flow of video programming from the video programmer to the consumer;

(B) ensure that [cable operators] *video service providers* affiliated with video programmers do not favor such programmers in determining carriage on their [cable] *video service* systems or do not unreasonably restrict the flow of the video programming of such programmers to other video distributors;

(C) take particular account of the market structure, ownership patterns, and other relationships of the [cable] *video service* television industry, including the nature and market power of the local franchise, the joint ownership of [cable] *video service* systems and video programmers, and the various types of non-equity controlling interests;

(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

(F) not impose limitations which would bar [cable operators]*video service providers* from serving previously unserved rural areas; and

(G) not impose limitations which would impair the development of diverse and high quality video programming.

[(g)] *(e)* This section shall not apply to prohibit any combination of any interests held by any person on [July 1, 1984,] *the date of enactment of the Video Competition and Savings for Consumers Act of 2006* to the extent of the interests so held as of such date, if the

holding of such interests was not inconsistent with any applicable Federal or State law or regulations in effect on that date.

[(h)] *(f)* For purposes of this section, the term "media of mass communications" shall have the meaning given such term under section 309(i)(3)(C)(i) of this Act.

SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

[47 U.S.C. 534]

(a) CARRIAGE OBLIGATIONS.—Each [cable operator] *video service provider* shall carry, on the [cable] *video service* system of that [operator,] *provider,* the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such [operator,] *provider,* subject to section 325(b).

(b) SIGNALS REQUIRED.—

(1) IN GENERAL.—(A) A [cable operator] *video service provider* of a [cable] *video service* system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

(B) A [cable operator] *video service provider* of a [cable] *video service* system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

(2) SELECTION OF SIGNALS.—Whenever the number of local commercial television stations exceeds the maximum number of signals a [cable] *video service* system is required to carry under paragraph (1), the [cable operator] *video service provider* shall have discretion in selecting which such stations shall be carried on its [cable] *video service* system, except that—

(A) under no circumstances shall a [cable operator] *video service provider* carry a qualified low power station in lieu of a local commercial television station; and

(B) if the [cable operator] *video service provider* elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such [cable operator] *video service provider* shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the [cable] *video service* system.

(3) CONTENT TO BE CARRIED.—(A) A [cable operator] *video service provider* shall carry in its entirety, on the [cable] *video service* system of that [operator,] *provider,* the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the [cable] *video service* system and, to the extent technically feasible, program-related material carried in the vertical blanking

interval or on subcarriers. Retransmission of other material in the vertical blanking internal or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the [cable operator.] *video service provider.* Where appropriate and feasible, [operators] *providers* may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(B) The [cable operator] *video service provider* shall carry the entirety of the program schedule of any television station carried on the [cable] *video service* system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

(4) SIGNAL QUALITY.—

(A) NONDEGRADATION; TECHNICAL SPECIFICATIONS.—The signals of local commercial television stations that a [cable operator] *video service provider* carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a [cable] *video service* system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

[(B)] DIGITAL VIDEO SIGNAL.—With respect to any television station that is transmitting broadcast programming exclusively in the digital television service in a local market, a cable operator of a cable system in that market shall carry any digital video signal requiring carriage under this section and program-related material in the digital format transmitted by that station, without material degradation, if the licensee for that station relies on this section or section 615 to obtain carriage of the digital video signal and program-related material on that cable system in that market.

(C) MULTIPLE FORMATS PERMITTED.—A cable operator of a cable system may offer the digital video signal and program-related material of a local television station described in subparagraph (A) in any analog or digital format or formats, whether or not doing so requires conversion from the format transmitted by the local television station, so long as—

(i) the cable operator offers the digital video signal and program-related material in the converted analog or digital format or formats without material degradation; and

(ii) also offers the digital video signal and program-related material in the manner or manners required by this paragraph.

(D) TRANSITIONAL CONVERSIONS.—Notwithstanding the requirement in subparagraph (B) to carry the digital video

signal and program-related material in the digital format transmitted by the local television station, but subject to the prohibition on material degradation, until February 17, 2014—

(i) a cable operator—

(I) shall offer the digital video signal and program-related material in the format or formats necessary for such signal and material to be viewable on analog and digital televisions; and

(II) may convert the digital video signal and program-related material to standard-definition digital format in lieu of offering it in the digital format transmitted by the local television station; and

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

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

(II) may, but shall not be required to, offer the digital video signal and program-related material in any digital format or formats.

(E) LOCATION AND METHOD OF CONVERSION.—A cable operator of a cable system may perform any conversion permitted or required by this paragraph at any location, from the cable head-end to the customer premises, inclusive.

(F) CONVERSIONS NOT TREATED AS DEGRADATION.—Any conversion permitted or required by this paragraph shall not, by itself, be treated as a material degradation.

(G) CARRIAGE OF PROGRAM-RELATED MATERIAL.—The obligation to carry program-related material under this paragraph is effective only to the extent technically feasible.

(H) DEFINITION OF STANDARD-DEFINITION FORMAT.—For purposes of this paragraph, a signal shall be in standard definition digital format if such signal meets the criteria for such format specified in the standard recognized by the Commission in section 73.682 of its rules (47 C.F.R. 73.682) or a successor regulation.

[(B)**]** *(I)* ADVANCED TELEVISION.—At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of **[**cable**]** *video service* television systems necessary to ensure **[**cable**]** *video service* carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

(5) DUPLICATION NOT REQUIRED.—Notwithstanding paragraph (1), a **[**cable operator**]** *video service provider* shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its **[**cable**]** *video service* system, or to carry the signals of more than one

local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a [cable operator] *video service provider* elects to carry on its [cable] *video service* system a signal which substantially duplicates the signal of another local commercial television station carried on the [cable] *video service* system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the [operator] *provider* is required to carry under paragraph (1).

(6) CHANNEL POSITIONING.—Each signal carried in fulfillment of the carriage obligations of a [cable operator] *video service provider* under this section shall be carried on the [cable] *video service* system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the [cable operator.] *video service provider.* Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

(7) SIGNAL AVAILABILITY.—Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a [cable] *video service* system. Such signals shall be viewable via [cable] *video service* on all television receivers of a subscriber which are connected to a [cable] *video service* system by a [cable operator] *video service provider* or for which a [cable operator] *video service provider* provides a connection. If a [cable operator] *video service provider* authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the [operator] *provider* shall notify such subscribers of all broadcast stations carried on the [cable] *video service* system which cannot be viewed via [cable] *video service* without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(3).

(8) IDENTIFICATION OF SIGNALS CARRIED.—A [cable operator] *video service provider* shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

(9) NOTIFICATION.—A [cable operator] *video service provider* shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon [cable operators] *video service providers* under this section.

(10) COMPENSATION FOR CARRIAGE.—A [cable operator] *video service provider* shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that—

(A) any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the [cable] *video service* system;

(B) a [cable operator] *video service provider* may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as indemnification for any increased copyright liability resulting from carriage of such signal; and

(C) a [cable operator] *video service provider* may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a [cable operator] *video service provider* and a local commercial television station entered into prior to June 26, 1990.

(c) LOW POWER STATION CARRIAGE OBLIGATION.—

(1) REQUIREMENT.—If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b)—

(A) a [cable operator] *video service provider* of a [cable] *video service* system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

(B) a [cable operator] *video service provider* of a [cable] *video service* system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

(2) USE OF PUBLIC, EDUCATIONAL, OR GOVERNMENTAL CHANNELS.—A [cable operator] *video service provider* required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) REMEDIES.—

(1) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local commercial television station believes that a [cable operator] *video service provider* has failed to meet its obligations under this section, such station shall notify the [operator] *provider*, in writing, of the alleged failure and identify its reasons for believing that the [cable operator] *video service provider* is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The [cable operator] *video service provider* shall, within 30 days of such written notifica-

tion, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a [cable operator] *video service provider* may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such [cable operator] *video service provider* has failed to meet its obligations and the basis for such allegations.

(2) OPPORTUNITY TO RESPOND.—The Commission shall afford such [cable operator] *video service provider* an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed, the Commission shall determine whether the [cable operator] *video service provider* has met its obligations under this section. If the Commission determines that the [cable operator] *video service provider* has failed to meet such obligations, the Commission shall order the [cable operator] *video service provider* to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the [cable operator] *video service provider* has fully met the requirements of this section, it shall dismiss the complaint.

(e) INPUT SELECTOR SWITCH RULES ABOLISHED.—No [cable operator] *video service provider* shall be required—

(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device; or

(2) to provide information to subscribers about input selector switches or comparable devices.

(f) REGULATIONS BY COMMISSION.—Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

(g) SALES PRESENTATIONS AND PROGRAM LENGTH COMMERCIALS.—

(1) CARRIAGE PENDING PROCEEDING.—Pending the outcome of the proceeding under paragraph (2), nothing in this Act shall require a [cable operator] *video service provider* to carry on any tier, or prohibit a [cable operator] *video service provider* from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

(2) PROCEEDING CONCERNING CERTAIN STATIONS.—Within 270 days after the date of enactment of this section, the Commission, notwithstanding prior proceedings to determine whether

broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a). In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

(h) MATERIAL DEGRADATION.—For purposes of this section and section 615, transmission of a digital signal over a cable system in a compressed bitstream shall not be considered material degradation as long as such compression does not materially affect the picture quality the consumer receives.

[(h)] *(i)* DEFINITIONS.—

(1) LOCAL COMMERCIAL TELEVISION STATION.—

(A) IN GENERAL.—For purposes of this section, the term "local commercial television station" means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 615(l)(1), licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular [cable] *video service* system, is within the same television market as the [cable] *video service* system.

(B) EXCLUSIONS.—The term "local commercial television station" shall not include—

(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, United States Code, if such station does not agree to indemnify the [cable operator] *video service provider* for any increased copyright liability resulting from carriage on the [cable] *video service* system; or

(iii) a television broadcast station that does not deliver to the principal headend of a [cable] *video service* system either a signal level of −45dBm for UHF signals or −49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the [cable] *video service* system a signal of good quality or a baseband video signal.

(C) MARKET DETERMINATIONS.—(i) For purposes of this section, a broadcasting station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as—

(I) whether the station, or other stations located in the same area, have been historically carried on the [cable] *video service* system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether any other television station that is eligible to be carried by a [cable] *video service* system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(IV) evidence of viewing patterns in [cable] *video service* and [noncable] *non-video service* households within the areas served by the [cable] *video service* system or systems in such community.

(iii) A [cable operator] *video service provider* shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

(iv) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after the date of enactment of the Telecommunications Act of 1996, if later), the Commission shall grant or deny the request.

(2) QUALIFIED LOW POWER STATION.—The term "qualified low power station" means any television broadcast station conforming to the rules established for Low Power Television Sta-

tions contained in part 74 of title 47, Code of Federal Regulations, only if—

(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

(D) such station is located no more than 35 miles from the [cable] *video service* system's headend, and delivers to the principal headend of the [cable] *video service* system an over-the-air signal of good quality, as determined by the Commission;

(E) the community of license of such station and the franchise area of the [cable] *video service* system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the [cable] *video service* system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on the date of enactment of this section.

SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION.

[47 U.S.C. 535]

(a) CARRIAGE OBLIGATIONS.—In addition to the carriage requirements set forth in section 614, each [cable operator] *video service provider* of a [cable] *video service* system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

(b) REQUIREMENTS TO CARRY QUALIFIED STATIONS.—

(1) GENERAL REQUIREMENT TO CARRY EACH QUALIFIED STATION.—Subject to paragraphs (2) and (3) and subsection (e),

each [cable operator] *video service provider* shall carry, on the [cable] *video service* system of that [cable operator,] *video service provider,* any qualified local noncommercial educational television station requesting carriage.

(2)(A) SYSTEMS WITH 12 OR FEWER CHANNELS.—Notwithstanding paragraph (1), a [cable operator] *video service provider* of a [cable] *video service* system with 12 or fewer usable activated channels shall be required to carry the signal of one qualified local noncommercial educational television station; except that a [cable operator] *video service provider* of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

(B) In the case of a [cable] *video service* system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

(i) the [cable operator] *video service provider* shall import and carry on that system the signal of one qualified noncommercial educational television station;

(ii) the selection for carriage of such a signal shall be at the election of the [cable operator;] *video service provider;* and

(iii) in order to satisfy the requirements for carriage specified in this subsection, the [cable operator] *video service provider* of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such [cable operator] *video service provider* shall use the first channel available to satisfy the requirements of this subparagraph.

(3) SYSTEMS WITH 13 TO 36 CHANNELS.—(A) Subject to subsection (c), a [cable operator] *video service provider* of a [cable] *video service* system with 13 to 36 usable activated channels—

(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

(ii) may, in its discretion, carry additional such stations.

(B) In the case of a [cable] *video service* system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the [cable operator] *video service provider* shall import and carry on that system the signal of at least one qualified noncommercial educational television station to comply with subparagraph (A)(i).

(C) The [cable operator] *video service provider* of a [cable] *video service* system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television stations affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the

qualified local noncommercial educational television station receiving carriage.

(D) A [cable operator] *video service provider* of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

(c) CONTINUED CARRIAGE OF EXISTING STATIONS.—Notwithstanding any other provision of this section, all [cable operators] *video service providers* shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular [cable operator] *video service provider* and a particular such station, upon the written consent of the [cable operator] *video service provider* and the station.

(d) PLACEMENT OF ADDITIONAL SIGNALS.—A [cable operator] *video service provider* required to add the signals of qualified local noncommercial educational television stations to a [cable] *video service* system under this section may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

(e) SYSTEMS WITH MORE THAN 36 CHANNELS.—A [cable operator] *video service provider* of a [cable] *video service* system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

(f) WAIVER OF NONDUPLICATION RIGHTS.—A qualified local noncommercial educational television station whose signal is carried by a [cable operator] *video service provider* shall not assert any network nonduplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that [cable operator.] *video service provider.*

(g) CONDITIONS OF CARRIAGE.—

(1) CONTENT TO BE CARRIED.—A [cable operator] *video service provider* shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the [cable] *video service* system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes.

Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the [cable operator.] *video service provider.*

(2) BANDWIDTH AND TECHNICAL QUALITY.—A [cable operator] *video service provider* shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the [cable] *video service* system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

(3) CHANGES IN CARRIAGE.—The signal of a qualified local noncommercial educational television station shall not be repositioned by a [cable operator] *video service provider* unless the [cable operator,] *video service provider,* at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the [cable] *video service* system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a [cable] *video service* system channel number different from the [cable] *video service* system channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the [cable] *video service* system. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon [cable operators] *video service providers* under this section.

(4) GOOD QUALITY SIGNAL REQUIRED.—Notwithstanding the other provisions of this section, a [cable operator] *video service provider* shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the [cable] *video service* system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission.

(5) CHANNEL POSITIONING.—Each signal carried in fulfillment of the carriage obligations of a [cable operator] *video service provider* under this section shall be carried on the [cable] *video service* system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the [cable operator.] *video service provider.* Any dispute regarding the positioning of a qualified local noncommercial educational television station shall be resolved by the Commission.

(h) AVAILABILITY OF SIGNALS.—Signals carried in fulfillment of the carriage obligations of a [cable operator] *video service provider* under this section shall be available to every subscriber as part of the [cable] *video service* system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

(i) PAYMENT FOR CARRIAGE PROHIBITED.—

(1) IN GENERAL.—A [cable operator] *video service provider* shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the [cable] *video service* system.

(2) DISTANT SIGNAL EXCEPTION.—Notwithstanding the provisions of this section, a [cable operator] *video service provider* shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of subsection (c), where such signal would be considered a distant signal for copyright purposes unless such station indemnifies the [cable operator] *video service provider* for any increased copyright costs resulting from carriage of such signal.

(j) REMEDIES.—

(1) COMPLAINT.—Whenever a qualified local noncommercial educational television station believes that a [cable operator] *video service provider* of a [cable] *video service* system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such [cable operator] *video service provider* has failed to comply with such requirements and state the basis for such allegations.

(2) OPPORTUNITY TO RESPOND.—The Commission shall afford such [cable operator] *video service provider* an opportunity to present data, views, and arguments to establish that the [cable operator] *video service provider* has complied with the signal carriage requirements of this section.

(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the [cable operator] *video service provider* has complied with the requirements of this section. If the Commission determines that the [cable operator] *video service provider* has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the [cable operator] *video service provider* to take such remedial action as is necessary to meet such requirements. If the Commission determines that the [cable operator] *video service provider* has fully complied with such requirements, the Commission shall dismiss the complaint.

(k) IDENTIFICATION OF SIGNALS.—A [cable operator] *video service provider* shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

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

(1) QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term "qualified noncommercial educational television station" means any television broadcast station which—

(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast sta-

tion and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B); or

(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

(2) QUALIFIED LOCAL NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term "qualified local noncommercial educational television station" means a qualified noncommercial educational television station—

(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the [cable] *video service* system; or

(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the [cable] *video service* system.

SEC. 616. REGULATION OF CARRIAGE AGREEMENTS.

[47 U.S.C. 536]

(a) REGULATIONS.—Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between [cable operators] *video service providers* or other multichannel video programming distributors and video programming vendors. Such regulations shall—

(1) include provisions designed to prevent a [cable operator] *video service provider* or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such [operator's] *provider's* systems;

(2) include provisions designed to prohibit a [cable operator] *video service provider* or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(b) DEFINITION.—As used in this section, the term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

[SEC. 617. SALES OF CABLE SYSTEMS.

[47 U.S.C. 537]

[A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.]

[PART III—FRANCHISING AND REGULATION]

PART III—FRANCHISING

SEC. 621. GENERAL FRANCHISE REQUIREMENTS.

[47 U.S.C. 541]

[(a)(1) A franchising authority may award, in accordance with the provisions of this title, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 635 for failure to comply with this subsection.

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

[(A) that the safety, functioning, and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;

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

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

[(3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

[(4) In awarding a franchise, the franchising authority—

[(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

[(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

[(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.]

(a) IN GENERAL.—

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

(A) grant an exclusive franchise; or

(B) grant a franchise for a term shorter than 5 years or longer than 15 years as provided in section 603.

(2) PRESERVATION OF LOCAL GOVERNMENT AUTHORITY TO MANAGE PUBLIC RIGHTS-OF-WAY; EASEMENTS.—

(A) IN GENERAL.—Except as provided in this title, no State or local law may prohibit, or have the effect of prohibiting, a video service provider from offering video service.

(B) HOLD HARMLESS.—A State or local government shall apply its laws or regulations in a manner that is reasonable, competitively neutral, nondiscriminatory, and consistent with State police powers, including permitting, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages to ensure compliance with such laws and regulations. Any permitting fees imposed by a State or local government shall be for the purpose of compensating that government for the costs incurred in managing public rights-of-way. Any law or regulation that meets the requirements of this subparagraph shall not be held to violate subparagraph (A).

(C) PROPERTY OWNERS.—Nothing in this title precludes a State or local government from requiring that a property owner be justly compensated by a video service provider for damage caused by the installation, construction, operation, or removal of facilities by the video service provider.

(D) DISPUTE RESOLUTION.—If a dispute arises concerning the application of subparagraph (A), (B), or (C), the sole recourse of any party to the dispute shall be to file an action in a court of competent jurisdiction.

(3) USE OF PUBLIC RIGHTS-OF-WAY.—Any franchise shall be construed to authorize the construction of a video service system over public rights-of-way, and through easements, which is within the area to be served by the video service system and which have been dedicated for compatible uses, except that in using such easements the video service provider shall ensure—

(A) that the safety and functioning of the property and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for a video service system; and

(B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the video service provider or subscriber, or a combination of both.

(b)[(1) Except to the extent provided in paragraph (2) and subsection (f), a cable operator may not provide cable service without a franchise.] *(1) Except to the extent provided in subsection (f), a video service provider may not provide video service without a franchise.*

(2) Paragraph (1) shall not require any person lawfully providing [cable service] *video service* without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.

(3)(A) If a [cable operator] *video service provider* or affiliate thereof is engaged in the provision of telecommunications services—

(i) such [cable operator] *video service provider* or affiliate shall not be required to obtain a franchise under this title for the provision of telecommunications services; and

(ii) the provisions of this title shall not apply to such [cable operator] *video service provider* or affiliate for the provision of telecommunications services.

(B) A franchising authority may not impose any requirement under this title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a [cable operator] *video service provider* or an affiliate thereof.

(C) A franchising authority may not order a [cable operator] *video service provider* or affiliate thereof—

(i) to discontinue the provision of a telecommunications service, or

(ii) to discontinue the operation of a [cable] *video service* system, to the extent such [cable] *video service* system is used for the provision of a telecommunications service, by reason of the failure of such [cable operator] *video service provider* or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

(D) Except as otherwise permitted by sections 611 and 612, a franchising authority may not require a [cable operator] *video service provider* to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.

(c) Any [cable] *video service* system shall not be subject to regulation as a common carrier or utility by reason of providing any [cable service.] *video service.*

(d)(1) A State or the Commission may require the filing of informational tariffs for any intrastate communications service provided by a [cable] *video service* system, other than [cable service,] *video service,* that would be subject to regulation by the Commission or any State if offered by a common carrier subject in whole or in part, to title II of this Act. Such informational tariffs shall specify the rates, terms, and conditions for the provision of such service, including whether it is made available to all subscribers generally, and shall take effect on the date specified therein.

(2) Nothing in this title shall be construed to affect the authority of any State to regulate any [cable operator] *video service provider* to the extent that such [operator] *provider* provides any communication service other than [cable service,] *video service,* whether offered on a common carrier or private contract basis.

(3) For purposes of this subsection, the term "State" has the meaning given it in section 3.

(e) Nothing in this title shall be construed to affect the authority of any State to license or otherwise regulate any facility or combination of facilities which serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management and which does not use any public right-of-way.

[(f) No provision of this Act shall be construed to—

[(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the franchise area, notwithstanding the granting of one or more franchises by such franchising authority; or

[(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.]

(f) MUNICIPAL OPERATORS.—No provision of this title shall be construed to prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the franchise area, notwithstanding the granting of one or more franchises by the franchising authority.

(g) CHILD PORNOGRAPHY.—

(1) IN GENERAL.—A video service provider authorized to provide video service in a local franchise area shall comply with the regulations on child pornography promulgated pursuant to paragraph (2).

(2) REGULATIONS.—Not later than 180 days after the date of enactment of the Advanced Telecommunications and Opportunities Reform Act, the Commission shall promulgate regulations to require a video service to prevent the offering of child pornography (as such term is defined in section 254(h)(7)(F)).

SEC. 622. FRANCHISE FEES.

[47 U.S.C. 542]

[(a) Subject to the limitation of subsection (b), any cable operator may be required under the terms of any franchise to pay a franchise fee.

[(b) For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services. For purposes of this section, the 12-month period shall be the 12-month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit a franchising authority and a cable operator from agreeing that franchise fees which lawfully could be collected for any such 12-month period shall be paid on a prepaid or deferred basis; except that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.]

(a) IN GENERAL.—A franchising authority may impose and collect a franchise fee from a video service provider that provides video services within the local franchise area of that authority. A franchising authority may not discriminate among video service providers in imposing or collecting any fee assessed under this section.

(b) AMOUNT.—

(1) IN GENERAL.—The franchise fee imposed by a franchising authority under subsection (a) for any 12-month period may not exceed 5 percent of the video service provider's gross revenue derived in such period. For purposes of this section, the 12-month period shall be the 12-month period applicable under the franchise for accounting purposes.

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

(3) FRANCHISING AUTHORITY AND VIDEO SERVICE PROVIDER AGREEMENTS.—Nothing in this section precludes a State or local government and a video service provider from entering into a voluntary commercial agreement, whereby in consideration for a mutually agreed upon reduction in the franchise fee under paragraph (1), the video service provider makes available to the local unit of government services, equipment, capabilities, or other valuable consideration.

(4) PEG AND INSTITUTIONAL NETWORK FINANCIAL SUPPORT.—

(A) IN GENERAL.—Except as provided in subparagraph (D), a video service provider may be required to pay a fee equal to—

'(i) not more than 1 percent of the video service provider's gross revenue in the franchise area to the franchising authority for the support of public, educational, and governmental access facilities and institutional networks; or

(ii) the value, on a per subscriber basis, of all monetary grants or in-kind services or facilities for public, educational, or governmental access facilities provided

by the cable operator in the franchise area with the most cable service subscribers in the calendar year preceding the date of enactment of the Video Competition and Savings for Consumers Act of 2006, pursuant to that cable operator's existing franchise in effect on the date of enactment of that Act.

(B) CALCULATION DATA.—A franchising authority may require a cable operator to provide information sufficient to calculate the per-subscriber equivalent fee allowed by subparagraph (A)(ii). The information shall be treated as confidential and proprietary business information. The payments made by a video service provider pursuant to subparagraph (A) shall be assessed and collected in a manner consistent with this section.

(C) EXISTING INSTITUTIONAL NETWORKS.—

(i) CONTINUED SERVICE.—Except as provided in subparagraph (D), a franchising authority may require a cable operator or video service provider with a franchise in effect on the date of enactment of the Video Competition and Savings for Consumers Act of 2006 to continue to provide any institutional network it was required to provide on the date of enactment of that Act notwithstanding the expiration or termination of that franchise pursuant to section 381(b) of the Video Competition and Savings for Consumers Act of 2006.

(ii) NEW NETWORK NOT REQUIRED.—A franchising authority may not require a video service provider to construct a new institutional network.

(D) SPECIAL RULE.—In Hawaii—

(i) subparagraph (A)(ii) shall be applied by inserting "and institutional networks" after "governmental access facilities"; and

(ii) subparagraph (C)(i) shall be applied by inserting "or had committed to provide" after "required to provide".

(c) Each ⟦cable operator⟧ *video service provider* may identify, consistent with the regulations prescribed by the Commission pursuant to section 623, as a separate line item on each regular bill of each subscriber, each of the following:

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the ⟦cable operator⟧ *video service provider* by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the ⟦operator⟧ *provider* and the subscriber.

⟦(d) In any court action under subsection (c), the franchising authority shall demonstrate that the rate structure reflects all costs of the franchise fees.

[(e) Any cable operator shall pass through to subscribers the amount of any decrease in a franchise fee.

[(f) A cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.

[(g) For the purposes of this section—

[(1) the term "franchise fee" includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such;

[(2) the term "franchise fee" does not include—

[(A) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

[(B) in the case of any franchise in effect on the date of the enactment of this title, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;

[(C) in the case of any franchise granted after such date of enactment, capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;

[(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

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

[(h)(1) Nothing in this Act shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of any kind on any person (other than a cable operator) with respect to cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator.

[(2) For any 12-month period, the fees paid by such person with respect to any such cable service or other communications service shall not exceed 5 percent of such person's gross revenues derived in such period from the provision of such service over the cable system.]

(d) OTHER TAXES, FEES, AND ASSESSMENTS NOT AFFECTED.—Except as otherwise provided in this section, nothing in this section shall be construed to modify, impair, supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation.

(e) ANNUAL REVIEW.—

(1) FRANCHISING AUTHORITY AUDIT PROCEDURE.—A franchising authority may, upon reasonable written request, but no more than once in any 12-month period, review the business records of a video service provider to the extent reasonably necessary to ensure payment of the fees required by this section. The review may include the methodology used by the video service provider to assign portions of the revenue from video service that may be bundled or functionally integrated with other serv-

ices, capabilities, or applications. The review shall be conducted in accordance with procedures established by the Commission.

(2) AVAILABILITY OF BOOKS AND RECORDS.—Upon request under paragraph (1), a video service provider shall make available its books and records for periodic audit by a franchising authority. The franchising authority shall treat information obtained in the course of such an audit as confidential and proprietary and protect sensitive information from public disclosure.

(3) COST RECOVERY.—To the extent that the review under paragraph (1) identifies an underpayment of more than 5 percent of any fee required by this section for the period of review, the video service provider shall reimburse the franchising authority the reasonable costs of any such review conducted by an independent third party with respect to such fee. The costs of any contingency fee arrangement between the franchising authority and the independent reviewer shall not be subject to reimbursement.

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

(f) GAAP STANDARDS.—For purposes of this section, all financial determinations and computations shall be made in accordance with generally accepted accounting principles except as otherwise provided.

(g) DEFINITIONS.—In this section:

(1) FRANCHISE FEE.—The term "franchise fee"—

(A) includes any tax, fee, or assessment of any kind imposed by a franchising authority or a State or local governmental entity on a video service provider or subscriber, or both, solely because of their status as such; but

(B) does not include—

(i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and video service providers or their services but not including a tax, fee, or assessment which is unduly discriminatory against video service providers or subscribers);

(ii) any fee that is required by the franchise under subsection (b)(4);

(iii) requirements or charges incidental to the use of public rights-of-way, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages;

(iv) costs of fines, penalties, or recoupment; or

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

(2) GROSS REVENUE.—

(A) IN GENERAL.—The term "gross revenue" means all consideration of any kind or nature including cash, credits, property, and in-kind contributions (services or goods) re-

ceived by a video service provider from the provision of video service within a franchise area including—

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

(ii) revenue received by a video service provider as compensation for carriage of video programming on the provider's system;

(iii) compensation received by a video service provider as compensation for promotion or exhibition of any product or service on the provider's video service, such as a home shopping or similar channel, subject to subparagraph (D)(vi); and

(iv) a pro rata portion of all revenue derived by a video service provider or an affiliate thereof pursuant to a compensation arrangement for advertising derived from the operation of the provider's video service or the video service within a franchise area subject to subparagraph (D)(ii).

(B) AFFILIATES.—The gross revenue of a video service provider includes gross revenue of an affiliate to the extent the exclusion of the affiliate's gross revenue would have the effect of permitting the video service provider to evade the payment of franchise fees which would otherwise be paid by that video service provider for video services provided within the franchise area of the franchising authority imposing the fee.

(C) REVENUE FROM BUNDLED OR FUNCTIONALLY INTEGRATED SERVICE.—In the case of a video service that is packaged, bundled, or functionally integrated with other services, capabilities, or applications, gross revenue shall include only the revenue attributable to the video service, which shall be reflected on the books and records of the video service provider kept in the regular course of business.

(D) EXCLUSIONS.—Gross revenue of a video service provider (or an affiliate to the extent otherwise included in the gross revenue of the video service provider under subparagraph (B)) does not include—

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

(ii) refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already excluded under clause (i);

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

(I) voice, Internet access, or other broadband-enabled applications that are not video service; and

(II) services, capabilities, and applications that are sold or provided as part of a package or bun-

dle of services or capabilities, or that are functionally integrated with video service;

(iv) any revenues received by a video service provider or its affiliates for the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing;

(v) any costs attributable to the provision of video services to subscribers at no charge, including the provision of such services to public institutions without charge;

(vi) any revenue paid by subscribers to a home shopping programmer directly from the sale of merchandise through any home shopping channel offered as part of the video service provider's video services, but not excluding any commissions that are paid to the video service provider as compensation for promotion or exhibition of any product or service on the provider's video service, such as a home shopping or similar channel;

(vii) any revenue forgone from the provision of video service at no charge to any person other than forgone revenue exchanged for trades, barters, services, or other items of value;

(viii) any tax, fee, or assessment of general applicability imposed on a subscriber or transaction by Federal, State, or local government that is required to be collected by the video service provider and remitted to the taxing authority, including sales taxes, use taxes, and utility user taxes;

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

(x) the reimbursement by programmers for marketing costs actually incurred by a video service provider for the introduction of new programming; or

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

(I) resell the service; and

(II) pay any applicable franchise fee with respect thereto.

[(i)**]** *(h)* Any Federal agency may not regulate the amount of the franchise fees paid by a **[**cable operator,**]** *video service provider,* or regulate the use of funds derived from such fees, except as provided in this section.

SEC. 623. REGULATION OF RATES.

[47 U.S.C. 543**]**

(a) COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.—

(1) IN GENERAL.—No Federal agency or State may regulate the rates for the provision of **[**cable service**]** *video service* except to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of **[**cable service,**]** *video service,* or any other communications service provided over a **[**cable**]** *video service* system to **[**cable**]** *video service* subscribers, but only to the extent pro-

vided under this section. No Federal agency, State, or franchising authority may regulate the rates for [cable service] *video service* of a [cable] *video service* system that is owned or operated by a local government or franchising authority within whose jurisdiction that [cable] *video service* system is located and that is the only [cable] *video service* system located within such jurisdiction.

(2) PREFERENCE FOR COMPETITION.—If the Commission finds that a [cable] *video service* system is subject to effective competition, the rates for the provision of [cable service] *video service* by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a [cable] *video service* system is not subject to effective competition—

(A) the rates for the provision of basic [cable service] *video service* shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

(B) the rates for [cable] *video service* programming services shall be subject to regulation by the Commission under subsection (c).

(3) QUALIFICATION OF FRANCHISING AUTHORITY.—A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

(4) APPROVAL BY COMMISSION.—A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that—

(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a

reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

(5) REVOCATION OF JURISDICTION.—Upon petition by a [cable operator] *video service provider* or other interested party, the Commission shall review the regulation of [cable] *video service* system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

(6) EXERCISE OF JURISDICTION BY COMMISSION.—If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(7) AGGREGATION OF EQUIPMENT COSTS.—

(A) IN GENERAL.—The Commission shall allow [cable operators,] *video service providers,* pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

(B) REVISION TO COMMISSION RULES; FORMS.—Within 120 days of the date of enactment of the Telecommunications Act of 1996, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (A).

(b) ESTABLISHMENT OF BASIC SERVICE TIER RATE REGULATIONS.—

(1) COMMISSION OBLIGATION TO SUBSCRIBERS.—The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any [cable] *video service* system that is not subject to effective competition from rates for the basic service tier that exceed the rates that

would be charged for the basic service tier if such [cable] *video service* system were subject to effective competition.

(2) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission—

(A) shall seek to reduce the administrative burdens on subscribers, [cable operators,] *video service providers,* franchising authorities, and the Commission;

(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

(C) shall take into account the following factors:

(i) the rates for [cable] *video service* systems, if any, that are subject to effective competition;

(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) the revenues (if any) received by a [cable operator] *video service provider* from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between [cable operators] *video service providers* and [cable] *video service* subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against [cable operators] *video service providers* or [cable] *video service* subscribers;

(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

(3) EQUIPMENT.—The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for—

(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

(B) installation and monthly use of connections for additional television receivers.

(4) COSTS OF FRANCHISE REQUIREMENTS.—The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

(5) IMPLEMENTATION AND ENFORCEMENT.—The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include—

(A) procedures by which [cable operators] *video service providers* may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

(B) procedures for the expeditious resolution of disputes between [cable operators] *video service providers* and franchising authorities concerning the administration of such regulations;

(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

(6) NOTICE.—The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a [cable operator] *video service provider* to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

(7) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.—

(A) MINIMUM CONTENTS.—Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

[(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.]

(iii) Any analog signal and any digital video signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

(B) PERMITTED ADDITIONS TO BASIC TIER.—A [cable operator] *video service provider* may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

(8) BUY-THROUGH OF OTHER TIERS PROHIBITED.—

(A) PROHIBITION.—A [cable operator] *video service provider* may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A [cable operator] *video service provider* may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

(B) EXCEPTION; LIMITATION.—The prohibition in subparagraph (A) shall not apply to a [cable] *video service* system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the [operator] *provider* to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any [cable operator] *video service provider* after—

(i) the technology utilized by the [cable] *video service* system is modified or improved in a way that eliminates such technological limitation; or

(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

(C) WAIVER.—If, in any proceeding initiated at the request of any [cable operator,] *video service provider,* the Commission determines that compliance with the requirements of subparagraph (A) would require the [cable operator] *video service provider* to increase its rates, the Commission may, to the extent consistent with the public interest, grant such [cable operator] *video service provider* a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

(c) REGULATION OF UNREASONABLE RATES.—

(1) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for [cable] *video service* programming services that are unreasonable;

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any franchising authority (in accordance with paragraph (3)) alleging that a rate for [cable] *video service* programming services charged by a [cable operator] *video service provider* violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

(C) the procedures to be used to reduce rates for [cable] *video service* programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of the first complaint filed with the franchising authority under paragraph (3) and that are determined to be unreasonable.

(2) FACTORS TO BE CONSIDERED.—In establishing the criteria for determining in individual cases whether rates for [cable] *video service* programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors—

(A) the rates for similarly situated [cable] *video service* systems offering comparable [cable] *video service* programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

(B) the rates for [cable] *video service* systems, if any, that are subject to effective competition;

(C) the history of the rates for [cable] *video service* programming services of the system, including the relationship of such rates to changes in general consumer prices;

(D) the rates, as a whole, for all the [cable] *video service* programming, [cable] *video service* equipment, and [cable services] *video services* provided by the system, other than programming provided on a per channel or per program basis;

(E) capital and operating costs of the [cable] *video service* system, including the quality and costs of the customer service provided by the [cable] *video service* system; and

(F) the revenues (if any) received by a [cable operator] *video service provider* from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the [cable] *video service* programming services concerned.

(3) REVIEW OF RATE CHANGES.—The Commission shall review any complaint submitted by a franchising authority after the date of enactment of the Telecommunications Act of 1996 concerning an increase in rates for [cable] *video service* programming services and issue a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective it receives subscriber complaints.

(4) SUNSET OF UPPER TIER RATE REGULATION.—This subsection shall not apply to [cable] *video service* programming services provided after March 31, 1999.

(d) UNIFORM RATE STRUCTURE REQUIRED.—A [cable operator] *video service provider* shall have a rate structure, for the provision of [cable service,] *video service,* that is uniform throughout the geographic area in which [cable service] *video service* is provided over its [cable] *video service* system. This subsection does not apply to (1) a [cable operator] *video service provider* with respect to the provision of [cable service] *video service* over its [cable] *video service* system in any geographic area in which the video programming services offered by the [operator] *provider* in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a [cable operator] *video service provider* of a [cable] *video service* system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the [cable] *video service* system shall have the burden of showing that its discounted price is not predatory.

(e) DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.—Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

(1) prohibiting discrimination among subscribers and potential subscribers to [cable service,] *video service,* except that no Federal agency, State, or franchising authority may prohibit a [cable operator] *video service provider* from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

(2) requiring and regulating the installation or rental of equipment which facilitates the reception of [cable service] *video service* by hearing impaired individuals.

(f) NEGATIVE OPTION BILLING PROHIBITED.—A [cable operator] *video service provider* shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a [cable operator's] *video service provider's* proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

(g) COLLECTION OF INFORMATION.—The Commission shall, by regulation, require [cable operators] *video service providers* to file with the Commission or a franchising authority, as appropriate,

within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

(h) PREVENTION OF EVASIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

(i) SMALL SYSTEM BURDENS.—In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for [cable] *video service* systems that have 1,000 or fewer subscribers.

(j) RATE REGULATION AGREEMENTS.—During the term of an agreement made before July 1, 1990, by a franchising authority and a [cable operator] *video service provider* providing for the regulation of basic [cable service] *video service* rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

(k) REPORTS ON AVERAGE PRICES.—The Commission shall annually publish statistical reports on the average rates for basic [cable service] *video service* and other [cable] *video service* programming, and for converter boxes, remote control units, and other equipment, of—

(1) [cable] *video service* systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with

(2) [cable] *video service* systems that the Commission has found are not subject to such effective competition.

(l) DEFINITIONS.—As used in this section—

(1) The term "effective competition" means that—

(A) fewer than 30 percent of the households in the franchise area subscribe to the [cable service] *video service* of a [cable] *video service* system;

(B) the franchise area is—

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area;

(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area; or

(D) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated [cable operator] *video service provider* which is providing [cable service] *video service* in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated [cable operator] *video service provider* in that area.

(2) The term "cable programming service" means any video programming provided over a [cable] *video service* system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

(m) SPECIAL RULES FOR SMALL COMPANIES.—

(1) IN GENERAL.—Subsections (a), (b), and (c) do not apply to a small [cable operator] *video service provider* with respect to—

(A) [cable] *video service* programming services, or

(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,

in any franchise area in which that [operator] *provider* services 50,000 or fewer subscribers.

(2) DEFINITION OF SMALL [CABLE OPERATOR] *VIDEO SERVICE PROVIDER*.—For purposes of this subsection, the term "small [cable operator] *video service provider*" means a [cable operator] *video service provider* that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

(n) TREATMENT OF PRIOR YEAR LOSSES.—Notwithstanding any other provision of this section or of section 612, losses associated with a [cable] *video service* system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a [cable] *video service* system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.

SEC. 624. REGULATION OF SERVICES, FACILITIES, AND EQUIPMENT.

[47 U.S.C. 544]

[(a) Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this title.

[(b) In the case of any franchise granted after the effective date of this title, the franchising authority, to the extent related to the establishment or operation of a cable system—

[(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 626), may establish requirements for facilities and equipment, but may not, except as provided in subsection (h), establish requirements for video programming or other information services; and

[(2) subject to section 625, may enforce any requirements contained within the franchise—

[(A) for facilities and equipment; and

[(B) for broad categories of video programming or other services.

[(c) In the case of any franchise in effect on the effective date of this title, the franchising authority may, subject to section 625, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.]

[(d)] *(a)*(1) Nothing in this title shall be construed as prohibiting a franchising authority and a [cable operator] *video service provider* from specifying, in a franchise or renewal thereof, that certain [cable services] *video services* shall not be provided or shall be provided subject to conditions, if such [cable services] *video services* are obscene or are otherwise unprotected by the Constitution of the United States.

(2) In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a [cable operator] *video service provider* shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular [cable service] *video service* during periods selected by that subscriber.

(3)(A) If a [cable operator] *video service provider* provides a premium channel without charge to [cable] *video service* subscribers who do not subscribe to such premium channel, the [cable operator] *video service provider* shall, not later than 30 days before such premium channel is provided without charge—

(i) notify all [cable] *video service* subscribers that the [cable operator] *video service provider* plans to provide a premium channel without charge;

(ii) notify all [cable] *video service* subscribers when the [cable operator] *video service provider* plans to offer a premium channel without charge;

(iii) notify all [cable] *video service* subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

(iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC–17, or R.

[(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. No State or franchising authority may prohibit, condition, or restrict a cable

system's use of any type of subscriber equipment or any transmission technology.]

[(f)] *(b)*(1) Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of [cable services,] *video services,* except as expressly provided in this title.

(2) Paragraph (1) shall not apply to—

(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this title; and

(B) any rule, regulation, or order under title 17, United States Code.

[(g)] *(c)* Notwithstanding any such rule, regulation, or order, each [cable operator] *video service provider* shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on [cable] *video service* systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.

[(h) A franchising authority may require a cable operator to do any one or more of the following:

[(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

[(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.]

[(i)] *(d)* Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a [cable] *video service* system terminates service, of any cable *or wire* installed by the [cable operator] *video service provider* within the premises of such subscriber.A

SEC. 624A. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

[47 U.S.C. 544a]

(a) FINDINGS.—The Congress finds that—

(1) new and recent models of television receivers and video [cassette] recorders often contain premium features and functions that are disabled or inhibited because of [cable] *video service* scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by [cable operators] *video service providers* to receive programming;

(2) if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, or offer for sale, television receivers and video [cassette] recorders with new and innovative features and functions;

(3) [cable operators] *video service providers* should use technologies that will prevent signal thefts while permitting consumers to benefit from such features and functions in such receivers and recorders; and

(4) compatibility among televisions, video [cassette] recorders, and [cable] *video service* systems can be assured with narrow technical standards that mandate a minimum degree of common design and operation, leaving all features, functions, protocols, and other product and service options for selection through open competition in the market.

(b) COMPATIBLE INTERFACES.—

(1) REPORT; REGULATIONS.—Within 1 year after the date of enactment of this section, the Commission, in consultation with representatives of the [cable] *video service* industry and the consumer electronics industry, shall report to Congress on means of assuring compatibility between televisions and video [cassette] recorders and [cable] *video service* systems, consistent with the need to prevent theft of [cable service,] *video service,* so that [cable] *video service* subscribers will be able to enjoy the full benefit of both the programming available on [cable] *video service* systems and the functions available on their televisions and video [cassette] recorders. Within 180 days after the date of submission of the report required by this subsection, the Commission shall issue such regulations as are necessary to assure such compatibility.

(2) SCRAMBLING AND ENCRYPTION.—In issuing the regulations referred to in paragraph (1), the Commission shall determine whether and, if so, under what circumstances to permit [cable] *video service* systems to scramble or encrypt signals or to restrict [cable] *video service* systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' television receivers or video [cassette] recorders.

(c) RULEMAKING REQUIREMENTS.—

(1) FACTORS TO BE CONSIDERED.—In prescribing the regulations required by this section, the Commission shall consider—

(A) the need to maximize open competition in the market for all features, functions, protocols, and other product and service options of converter boxes and other [cable] *video service* converters unrelated to the descrambling or decryption of [cable] *video service* television signals;

(B) the costs and benefits to consumers of imposing compatibility requirements on [cable operators] *video service providers* and television manufacturers in a manner that, while providing effective protection against theft or unauthorized reception of [cable service,] *video service,* will minimize interference with or nullification of the special functions of subscribers' television receivers or video [cassette] recorders, including functions that permit the subscriber—

(i) to watch a program on one channel while simultaneously using a video [cassette] recorder to [tape] *record* a program on another channel;

(ii) to use a video [cassette] recorder to [tape] *record* two consecutive programs that appear on different channels; and

(iii) to use advanced television picture generation and display features; and

(C) the need for [cable operators] *video service providers* to protect the integrity of the signals transmitted by the [cable operator] *video service provider* against theft or to protect such signals against unauthorized reception.

(2) REGULATIONS REQUIRED.—The regulations prescribed by the Commission under this section shall include such regulations as are necessary—

(A) to specify the technical requirements with which a television receiver or video [cassette] recorder must comply in order to be sold as "cable compatible" or "cable ready";

(B) to require [cable operators] *video service providers* offering channels whose reception requires a converter box—

(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video [cassette] recorders, including functions that permit subscribers—

(I) to watch a program on one channel while simultaneously using a video [cassette] recorder to [tape] *record* a program on another channel;

(II) to use a video [cassette] recorder to [tape] *record* two consecutive programs that appear on different channels; and

(III) to use advanced television picture generation and display features; and

(ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video [cassette] recorders without passing through the converter box;

(C) to promote the commercial availability, from [cable operators] *video service providers* and retail vendors that are not affiliated with [cable] *video service* systems, of converter boxes and of remote control devices compatible with converter boxes;

(D) to ensure that any standards or regulations developed under the authority of this section to ensure compatibility between televisions, video [cassette] recorders, and [cable] *video service* systems do not affect features, functions, protocols, and other product and service options other than those specified in paragraph (1)(B), including telecommunications interface equipment, home automation communications, and computer network services;

(E) to require a [cable operator] *video service provider* who offers subscribers the option of renting a remote control unit—

(i) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the [cable operator;] *video service provider;* and

(ii) to specify the types of remote control units that are compatible with the converter box supplied by the [cable operator;] *video service provider;* and

(F) to prohibit a [cable operator] *video service provider* from taking any action that prevents or in any way disables the converter box supplied by the [cable operator] *video service provider* from operating compatibly with commercially available remote control units.

(d) REVIEW OF REGULATIONS.—The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in [cable] *video service* systems, television receivers, video [cassette] recorders, and similar technology.

[SEC. 625. MODIFICATION OF FRANCHISE OBLIGATIONS.

[47 U.S.C. 545]

[(a)(1) During the period a franchise is in effect, the cable operator may obtain from the franchising authority modifications of the requirements in such franchise—

[(A) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or

[(B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

[(2) Any final decision by a franchising authority under this subsection shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by the franchising authority, unless such 120-day period is extended by mutual agreement of the cable operator and the franchising authority.

[(b)(1) Any cable operator whose request for modification under subsection (a) has been denied by a final decision of a franchising authority may obtain modification of such franchise requirements pursuant to the provisions of section 635.

[(2) In the case of any proposed modification of a requirement for facilities or equipment, the court shall grant such modification only if the cable operator demonstrates to the court that—

[(A) it is commercially impracticable for the operator to comply with such requirement; and

[(B) the terms of the modification requested are appropriate because of commercial impracticability.

[(3) In the case of any proposed modification of a requirement for services, the court shall grant such modification only if the cable operator demonstrates to the court that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

[(c) Notwithstanding subsections (a) and (b), a cable operator may, upon 30 days' advance notice to the franchising authority, re-

arrange, replace, or remove a particular cable service required by the franchise if—

[(1) such service is no longer available to the operator; or

[(2) such service is available to the operator only upon the payment of a royalty required under section 801(b)(2) of title 17, United States Code, which the cable operator can document—

[(A) is substantially in excess of the amount of such payment required on the date of the operator's offer to provide such service, and

[(B) has not been specifically compensated for through a rate increase or other adjustment.

[(d) Notwithstanding subsections (a) and (b), a cable operator may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 623.

[(e) A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

[(f) For purposes of this section, the term "commercially impracticable" means, with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

[SEC. 626. RENEWAL.

[47 U.S.C. 546]

[(a)(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

[(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) unless—

[(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

[(B) such a proceeding is commenced by the franchising authority on its own initiative.

[(b)(1) Upon completion of a proceeding under subsection (a), a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

[(2) Subject to section 624, any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

[(3) The franchising authority may establish a date by which such proposal shall be submitted.

[(c)(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b), the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b), renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether—

[(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

[(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

[(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

[(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

[(2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a)), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

[(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

[(d) Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1), pursuant to the record of the proceeding under subsection (c). A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) or on events considered under subsection (c)(1)(B) in any case in which a violation of the franchise or the events considered under subsection (c)(1)(B) occur after the effective date of this title unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or

inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

[(e)(1) Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 635.

[(2) The court shall grant appropriate relief if the court finds that—

[(A) any action of the franchising authority, other than harmless error, is not in compliance with the procedural requirements of this section; or

[(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c)(1) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c).

[(f) Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

[(g) For purposes of this section, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on the date of the enactment of this title.

[(h) Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g).

[(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.]

SEC. 625. RENEWAL; REVOCATION.

(a) RENEWAL.—A video service provider may submit a written application for renewal of its franchise to a franchising authority not more than 180 days before the franchise expires. Any such application shall be made on the standard application form promulgated by the Commission under section 612 and shall be treated under section 603 in the same manner as any other franchise application.

(b) REVOCATION.—Notwithstanding any other law of general applicability, a franchising authority may revoke a video service provider's franchise if it determines, after notice and an opportunity for a hearing, that the video service provider has—

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

(2) made false statements, or material omissions, in any filing with the franchising authority or the Commission relating to the provision of video service in the franchise area;

(3) violated the rights-of-way management laws or regulations of any franchising authority in the franchise area relating to the provision of video service in the franchise area; or

(4) violated the terms of the franchise agreement (including any commercial agreement permitted under section 622(b)(3)).

(c) NOTICE; OPPORTUNITY TO CURE.—A franchising authority may not revoke a franchise unless it first provides—

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

(2) a reasonable opportunity to cure the violation.

(d) FINALITY OF DECISION.—Any decision of a franchising authority to revoke a franchise under this section is final for purposes of appeal. A video service provider whose franchise is revoked by a franchising authority may avail itself of the procedures in section 635 of this Act.

[SEC. 627. CONDITIONS OF SALE.

[47 U.S.C. 547]

[(a) If a renewal of a franchise held by a cable operator is denied and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

[(1) at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself, or

[(2) in the case of any franchise existing on the effective date of this title, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

[(b) If a franchise held by a cable operator is revoked for cause and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

[(1) at an equitable price, or

[(2) in the case of any franchise existing on the effective date of this title, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.]

SEC. [628.] *626.* DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

[47 U.S.C. 548]

(a) PURPOSE.—The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite [cable] *video service* programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.

(b) PROHIBITION.—It shall be unlawful for a [cable operator,] *video service provider,* a satellite [cable] *video service* programming vendor in which a [cable operator] *video service provider* has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite [cable] *video service* programming or satellite broadcast programming to subscribers or consumers.

(c) REGULATIONS REQUIRED.—

(1) PROCEEDING REQUIRED.—Within 180 days after the date of enactment of this section, the Commission shall, in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies, prescribe regulations to specify particular conduct that is prohibited by subsection (b).

(2) MINIMUM CONTENTS OF REGULATIONS.—The regulations to be promulgated under this section shall—

(A) establish effective safeguards to prevent a [cable operator] *video service provider* which has an attributable interest in a satellite [cable] *video service* programming vendor or a satellite broadcast programming vendor from unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, satellite [cable] *video service* programming or satellite broadcast programming to any unaffiliated multichannel video programming distributor;

(B) prohibit discrimination by a satellite [cable] *video service* programming vendor in which a [cable operator] *video service provider* has an attributable interest or by a satellite broadcast programming vendor in the prices, terms, and conditions of sale or delivery of satellite [cable] *video service* programming or satellite broadcast programming among or between [cable] *video service* systems, [cable operators,] *video service providers,* or other multichannel video programming distributors, or their agents or buying groups; except that such a satellite [cable] *video service* programming vendor in which a [cable operator] *video service provider* has an attributable interest or such a satellite broadcast programming vendor shall not be prohibited from—

(i) imposing reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

(ii) establishing different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite [cable] *video service* programming or satellite broadcast programming;

(iii) establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic bene-

fits reasonably attributable to the number of subscribers served by the distributor; or

(iv) entering into an exclusive contract that is permitted under subparagraph (D);

(C) prohibit practices, understandings, arrangements, and activities, including exclusive contracts for satellite [cable] *video service* programming or satellite broadcast programming between a [cable operator] *video service provider* and a satellite [cable] *video service* programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite [cable] *video service* programming vendor in which a [cable operator] *video service provider* has an attributable interest or any satellite broadcast programming vendor in which a [cable operator] *video service provider* has an attributable interest for distribution to persons in areas not served by a [cable operator] *video service provider* as of the date of enactment of this section; and

(D) with respect to distribution to persons in areas served by a [cable operator,] *video service provider,* prohibit exclusive contracts for satellite [cable] *video service* programming or satellite broadcast programming between a [cable operator] *video service provider* and a satellite [cable] *video service* programming vendor in which a [cable operator] *video service provider* has an attributable interest or a satellite broadcast programming vendor in which a [cable operator] *video service provider* has an attributable interest, unless the Commission determines (in accordance with paragraph (4)) that such contract is in the public interest.

(3) LIMITATIONS.—

(A) GEOGRAPHIC LIMITATIONS.—Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

(B) APPLICABILITY TO SATELLITE RETRANSMISSIONS.—Nothing in this section shall apply (i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming, or (ii) to any internal satellite communication of any broadcast network or [cable] *video service* network that is not satellite broadcast programming.

(4) PUBLIC INTEREST DETERMINATIONS ON EXCLUSIVE CONTRACTS.—In determining whether an exclusive contract is in the public interest for purposes of paragraph (2)(D), the Commission shall consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a [cable operator] *video service provider*:

(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

(B) the effect of such exclusive contract on competition from multichannel video programming distribution technologies other than [cable] *video service*;

(C) the effect of such exclusive contract on the attraction of capital investment in the production and distribution of new satellite [cable] *video service* programming;

(D) the effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

(E) the duration of the exclusive contract.

(5) SUNSET PROVISION.—The prohibition required by paragraph (2)(D) shall cease to be effective [10 years after the date of enactment of this section,] *on October 5, 2012,* unless the Commission finds, in a proceeding conducted during the [last year of such 10-year period,] *12-month period ending on that date,* that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

(d) ADJUDICATORY PROCEEDING.—Any multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection (b), or the regulations of the Commission under subsection (c), may commence an adjudicatory proceeding at the Commission.

(e) REMEDIES FOR VIOLATIONS.—

(1) REMEDIES AUTHORIZED.—Upon completion of such adjudicatory proceeding, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor.

(2) ADDITIONAL REMEDIES.—The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under title V or any other provision of this Act.

(f) PROCEDURES.—The Commission shall prescribe regulations to implement this section. The Commission's regulations shall—

(1) provide for an expedited review of any complaints made pursuant to this section;

(2) establish procedures for the Commission to collect such data, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged to violate this section, as the Commission requires to carry out this section; and

(3) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(g) REPORTS.—The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c), annually report to Congress on the status of competition in the market for the delivery of video programming.

(h) EXEMPTIONS FOR PRIOR CONTRACTS.—

(1) IN GENERAL.—Nothing in this section shall affect any contract that grants exclusive distribution rights to any person

with respect to satellite [cable] *video service* programming and that was entered into on or before June 1, 1990, except that the provisions of subsection (c)(2)(C) shall apply for distribution to persons in areas not served by a [cable operator.] *video service provider.*

(2) LIMITATION ON RENEWALS.—A contract that was entered into on or before June 1, 1990, but that is renewed or extended after the date of enactment of this section shall not be exempt under paragraph (1).

(i) DEFINITIONS.—As used in this section:

(1) The term "satellite [cable] *video service* programming" has the meaning provided under section 705 of this Act, except that such term does not include satellite broadcast programming.

(2) The term "satellite [cable] *video service* programming vendor" means a person engaged in the production, creation, or wholesale distribution for sale of satellite [cable] *video service* programming, but does not include a satellite broadcast programming vendor.

(3) The term "satellite broadcast programming" means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

(4) The term "satellite broadcast programming vendor" means a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming.

(j) COMMON CARRIERS.—Any provision that applies to a [cable operator] *video service provider* under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite [cable] *video service* programming vendor in which a [cable operator] *video service provider* has an attributable interest shall apply to any satellite [cable] *video service* programming vendor in which such common carrier has an attributable interest. For the purposes of this subsection, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite [cable] *video service* programming vendor (or its parent company).

SEC. [629.] *627.* COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES.

[47 U.S.C. 549]

(a) COMMERCIAL CONSUMER AVAILABILITY OF EQUIPMENT USED TO ACCESS SERVICES PROVIDED BY MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS.—The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems,

from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, to consumers, if the system [operator's] *provider's* charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.

(b) PROTECTION OF SYSTEM SECURITY.—The Commission shall not prescribe regulations under subsection (a) which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.

(c) WAIVER.—The Commission shall waive a regulation adopted under subsection (a) for a limited time upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection, and such waiver shall be effective for all service providers and products in that category and for all providers of services and products.

(d) AVOIDANCE OF REDUNDANT REGULATIONS.—

(1) COMMERCIAL AVAILABILITY DETERMINATIONS.—Determinations made or regulations prescribed by the Commission with respect to commercial availability to consumers of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, before the date of enactment of the Telecommunications Act of 1996 shall fulfill the requirements of this section.

(2) REGULATIONS.—Nothing in this section affects section 64.702(e) of the Commission's regulations (47 C.F.R. 64.702(e)) or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

(e) SUNSET.—The regulations adopted under this section shall cease to apply when the Commission determines that—

(1) the market for the multichannel video programming distributors is fully competitive;

(2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and

(3) elimination of the regulations would promote competition and the public interest.

(f) COMMISSION'S AUTHORITY.—Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before the date of enactment of the Telecommunications Act of 1996.

SEC. 628. ACCESS TO PROGRAMMING FOR SHARED FACILITIES.

(a) IN GENERAL.—A video service programming vendor in which a video service provider has an attributable interest may not deny a video service provider with a franchise under this title access to video programming solely because that video service provider uses a headend for its video service system that is also used, under a shared ownership or leasing agreement, as the headend for another video service system.

(b) VIDEO SERVICE PROGRAMMING VENDOR DEFINED.—The term "video service programming vendor" means a person engaged in the production, creation, or wholesale distribution for sale of video programming that is primarily intended for receipt by video service providers for retransmission to their video service subscribers.

PART IV—MISCELLANEOUS PROVISIONS

SEC. 631. PROTECTION OF SUBSCRIBER PRIVACY.

[47 U.S.C. 551]

(a)(1) At the time of entering into an agreement to provide any [cable service] *video service* or other service to a subscriber and at least once a year thereafter, a [cable operator] *video service provider* shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the [cable operator;] *video service provider;*

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a [cable operator] *video service provider* and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h)—

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a

[cable operator] *video service provider* that are used in the provision of [cable service;] *video service;* and

(C) the term "[cable operator] *video service provider*" includes, in addition to persons within the definition of [cable operator] *video service provider* in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a [cable operator,] *video service provider,* and (ii) provides any wire or radio communications service.

(b)(1) Except as provided in paragraph (2), a [cable operator] *video service provider* shall not use the [cable] *video service* system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A [cable operator] *video service provider* may use the [cable] *video service* system to collect such information in order to—

(A) obtain information necessary to render a [cable service] *video service* or other service provided by the [cable operator] *video service provider* to the subscriber; or

(B) detect unauthorized reception of [cable] *video service* communications.

(c)(1) Except as provided in paragraph (2), a [cable operator] *video service provider* shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or [cable operator.] *video service provider.*

(2) A [cable operator] *video service provider* may disclose such information if the disclosure is—

(A) necessary to render, or conduct a legitimate business activity related to, a [cable service] *video service* or other service provided by the [cable operator] *video service provider* to the subscriber;

(B) subject to subsection (h), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of subscribers to any [cable service] *video service* or other service, if—

(i) the [cable operator] *video service provider* has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the subscriber of a [cable service] *video service* or other service provided by the [cable operator,] *video service provider,* or

(II) the nature of any transaction made by the subscriber over the [cable] *video service* system of the [cable operator;] *video service provider;* or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing [cable] *video*

service subscriber selection of video programming from a [cable operator.] *video service provider.*

(d) A [cable] *video service* subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a [cable operator.] *video service provider.* Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such [cable operator.] *video service provider.* A [cable] *video service* subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) A [cable operator] *video service provider* shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) or pursuant to a court order.

(f)(1) Any person aggrieved by any act of a [cable operator] *video service provider* in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a [cable] *video service* subscriber.

(g) Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) Except as provided in subsection (c)(2)(D), a governmental entity may obtain personally identifiable information concerning a [cable] *video service* subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

[SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

[47 U.S.C. 552]

[(a) FRANCHISING AUTHORITY ENFORCEMENT.—A franchising authority may establish and enforce—

[(1) customer service requirements of the cable operator ; and

[(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator .

[(b) COMMISSION STANDARDS.—The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable opera-

tors may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing—

[(1) cable system office hours and telephone availability;

[(2) installations, outages, and service calls; and

[(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

[(c) SUBSCRIBER NOTICE.—A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding section 623(b)(6) or any other provision of this Act, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

[(d) CONSUMER PROTECTION LAWS AND CUSTOMER SERVICE AGREEMENTS.—

[(1) CONSUMER PROTECTION LAWS.—Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

[(2) CUSTOMER SERVICE REQUIREMENT AGREEMENTS.—Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.]

SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of the Video Competition and Savings for Consumers Act of 2006, the Commission, after receiving comments from interested parties, including national associations representing franchising authorities or consumers, shall promulgate regulations, which shall include penalties to be paid to subscribers with respect to customer service and consumer protection requirements for video service providers.

(2) EFFECTIVE DATE OF REGULATIONS.—The regulations required by subsection (a) shall take effect 60 days after the date on which a final rule is promulgated by the Commission.

(b) MAXIMUM PENALTY FOR EARLY TERMINATION OF SUBSCRIPTION.—It is unlawful for a video service provider to charge a subscriber an amount in excess of 1 month's subscription fee as a penalty or service charge for terminating a subscription to the video service provider's service before the date on which the subscription term ends.

(c) ENFORCEMENT.—The regulations promulgated by the Commission under subsection (a) and the provisions of subsection (b) shall be enforced by franchising authorities. A franchising authority may

refer a matter for enforcement to the State attorney general or the State consumer protection agency on a case-by-case basis.

(d) REVIEW BY COMMISSION.—A video service provider may appeal any enforcement action taken against that provider by a franchising authority to the Commission.

SEC. 633. UNAUTHORIZED RECEPTION OF [CABLE] *VIDEO* SERVICE.

[47 U.S.C. 553]

(a)(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a [cable] *video service* system, unless specifically authorized to do so by a [cable operator] *video service provider* or as may otherwise be specifically authorized by law.

(2) For the purpose of this section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a [cable] *video service* system in violation of subparagraph (1).

(b)(1) Any person who willfully violates subsection (a)(1) shall be fined not more than $1,000 or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a)(1) willfully and for purposes of commercial advantage or private financial gain shall be fined not more than $50,000 or imprisoned for not more than 2 years, or both, for the first such offense and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent offense.

(3) For purposes of all penalties and remedies established for violations of subsection (a)(1), the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

(c)(1) Any person aggrieved by any violation of subsection (a)(1) may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(2) The court may—

(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a)(1);

(B) award damages as described in paragraph (3); and

(C) direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(3)(A) Damages awarded by any court under this section shall be computed in accordance with either of the following clauses:

(i) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(ii) the party aggrieved may recover an award of statutory damages for all violations involved in the action, in a sum of

not less than $250 or more than $10,000 as the court considers just.

(B) In any case in which the court finds that the violation was committed willfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory under subparagraph (A), by an amount of not more than $50,000.

(C) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than $100.

(D) Nothing in this title shall prevent any State or franchising authority from enacting or enforcing laws, consistent with this section, regarding the unauthorized interception or reception of any [cable service] *video service* or other communications service.

SEC. 634. EQUAL EMPLOYMENT OPPORTUNITY.

[47 U.S.C. 554]

(a) This section shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any [cable] *video service* system.

(b) Equal opportunity in employment shall be afforded by each entity specified in subsection (a), and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age, or sex.

(c) Any entity specified in subsection (a) shall establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices. Under the terms of its program, each such entity shall—

(1) define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age, or sex, and solicit their recruitment assistance on a continuing basis;

(4) conduct a continuing program to exclude every form of prejudice or discrimination based on race, color, religion, national origin, age, or sex, from its personnel policies and practices and working conditions; and

(5) conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all its organizational units, occupations, and levels of responsibility.

(d)(1) Not later than 270 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, and after notice and opportunity for hearing, the Commission shall prescribe revisions in the rules under this section in order to

implement the amendments made to this section by such Act. Such revisions shall be designed to promote equality of employment opportunities for females and minorities in each of the job categories itemized in paragraph (3).

(2) Such rules shall specify the terms under which an entity specified in subsection (a) shall, to the extent possible—

(A) disseminate its equal opportunity program to job applicants, employees, and those with whom it regularly does business;

(B) use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever jobs are available in its operation;

(C) evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area;

(D) undertake to offer promotions of minorities and women to positions of greater responsibility;

(E) encourage minority and female entrepreneurs to conduct business with all parts of its operation; and

(F) analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program.

(3)(A) Such rules also shall require an entity specified in subsection (a) with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees in each of the following full-time and part-time job categories:

(i) Corporate officers.
(ii) General Manager.
(iii) Chief Technician.
(iv) Comptroller.
(v) General Sales Manager.
(vi) Production Manager.
(vii) Managers.
(viii) Professionals.
(ix) Technicians.
(x) Sales Personnel.
(xi) Office and Clerical Personnel.
(xii) Skilled Craftspersons.
(xiii) Semiskilled Operatives.
(xiv) Unskilled Laborers.
(xv) Service Workers.

(B) The report required by subparagraph (A) shall be made on separate forms, provided by the Commission, for full-time and part-time employees. The Commission's rules shall sufficiently define the job categories listed in clauses (i) through (vi) of such subparagraph so as to ensure that only employees who are principal decisionmakers and who have supervisory authority are reported for such categories. The Commission shall adopt rules that define the job categories listed in clauses (vii) through (xv) in a manner that is consistent with the Commission policies in effect on June 1, 1990. The Commission shall prescribe the method by which entities shall be required to compute and report the number of minorities

and women in the job categories listed in clauses (i) through (x) and the number of minorities and women in the job categories listed in clauses (i) through (xv) in proportion to the total number of qualified minorities and women in the relevant labor market. The report shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this subsection. The report shall be available for public inspection at the entity's central location and at every location where 5 or more full-time employees are regularly assigned to work. Nothing in this subsection shall be construed as prohibiting the Commission from collecting or continuing to collect statistical or other employment information in a manner that it deems appropriate to carry out this section.

(4) The Commission may amend such rules from time to time to the extent necessary to carry out the provisions of this section. Any such amendment shall be made after notice and opportunity for comment.

(e)(1) On an annual basis, the Commission shall certify each entity described in subsection (a) as in compliance with this section if, on the basis of information in the possession of the Commission, including the report filed pursuant to subsection (d)(3), such entity was in compliance, during the annual period involved, with the requirements of subsections (b), (c), and (d).

(2) The Commission shall, periodically but not less frequently than every five years, investigate the employment practices of each entity described in subsection (a), in the aggregate, as well as in individual job categories, and determine whether such entity is in compliance with the requirements of subsections (b), (c), and (d), including whether such entity's employment practices deny or abridge women and minorities equal employment opportunities. As part of such investigation, the Commission shall review whether the entity's reports filed pursuant to subsection (d)(3) accurately reflect employee responsibilities in the reported job classification.

(f)(1) If the Commission finds after notice and hearing that the entity involved has willfuly or repeatedly without good cause failed to comply with the requirements of this section, such failure shall constitute a substantial failure to comply with this title. The failure to obtain certification under subsection (e) shall not itself constitute the basis for a determination of substantial failure to comply with this title. For purposes of this paragraph, the term "repeatedly", when used with respect to failures to comply, refers to 3 or more failures during any 7-year period.

(2) Any person who is determined by the Commission, through an investigation pursuant to subsection (e) or otherwise, to have failed to meet or failed to make best efforts to meet the requirements of this section, or rules under this section, shall be liable to the United States for a forefeiture penalty of $500 for each violation. Each day of a continuing violation shall constitute a separate offense. Any entity defined in subsection (a) shall not be liable for more than 180 days of forfeitures which accrued prior to notification by the Commission of a potential violation. Nothing in this paragraph shall limit the forfeiture imposed on any person as a result of any violation that continues subsequent to such notification.

In addition, any person liable for such penalty may also have any license under this Act for [cable] *video service* auxiliary relay service suspended until the Commission determines that the failure involved has been corrected. Whoever knowingly makes any false statement or submits documentation which he knows to be false, pursuant to an application for certification under this section shall be in violation of this section.

(3) The provisions of paragraphs (3) and (4), and the last 2 sentences of paragraph (2), of section 503(b) shall apply to forfeitures under this subsection.

(4) The Commission shall provide for notice to the public and appropriate franchising authorities of any penalty imposed under this section.

(g) Employees or applicants for employment who believe they have been discriminated against in violation of the requirements of this section, or rules under this section, or any other interested person, may file a complaint with the Commission. A complaint by any such person shall be in writing, and shall be signed and sworn to by that person. The regulations under subsection (d)(1) shall specify a program, under authorities otherwise available to the Commission, for the investigation of complaints and violations, and for the enforcement of this section.

(h)(1) For purposes of this section, the term "[cable operator] *video service provider*" includes any [operator] *provider* of any satellite master antenna television system, including a system described in section 602(7)(A) and any multichannel video programming distributor.

(2) Such term does not include any [operator] *provider* of a system which, in the aggregate, serves fewer than 50 subscribers.

(3) In any case in which a [cable operator] *video service provider* is the owner of a multiple unit dwelling, the requirements of this section shall only apply to such [cable operator] *video service provider* with respect to its employees who are primarily engaged in [cable] *video service* telecommunications.

(i)(1) Nothing in this section shall affect the authority of any State or any franchising authority—

(A) to establish or enforce any requirement which is consistent with the requirements of this section, including any requirement which affords equal employment opportunity protection for employees;

(B) to establish or enforce any provision requiring or encouraging any [cable operator] *video service provider* to conduct business with enterprises which are owned or controlled by members of minority groups (as defined in section 309(i)(3)(C)(ii) or which have their principal operations located within the community served by the [cable operator;] *video service provider;* or

(C) to enforce any requirement of a franchise in effect on the effective date of this title.

(2) The remedies and enforcement provisions of this section are in addition to, and not in lieu of, those available under this or any other law.

(3) The provisions of this section shall apply to any [cable operator,] *video service provider,* whether operating pursuant to a fran-

chise granted before, on, or after the date of the enactment of this section.

SEC. 635. JUDICIAL PROCEEDINGS.

[47 U.S.C. 555]

(a) Any [cable operator] *video service provider* adversely affected by any final determination made by a franchising authority under section 621(a)(1), 625 or 626 may commence an action within 120 days after receiving notice of such determination, which may be brought in—

(1) the district court of the United States for any judicial district in which the [cable] *video service* system is located; or

(2) in any State court of general jurisdiction having jurisdiction over the parties.

(b) The court may award any appropriate relief consistent with the provisions of the relevant section described in subsection (a) and with the provisions of subsection (a).

(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 614 or 615 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 614 or 615 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.A

SEC. [635A.] *636* LIMITATION OF FRANCHISING AUTHORITY LIABILITY.

[47 U.S.C. 555a]

(a) SUITS FOR DAMAGES PROHIBITED.—In any court proceeding pending on or initiated after the date of enactment of this section involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of [cable service] *video service* or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

(b) EXCEPTION FOR COMPLETED CASES.—The limitation contained in subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a [cable operator's] *video service provider's* rights.

(c) DISCRIMINATION CLAIMS PERMITTED.—Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to [cable service] *video service* or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity.

[SEC. 636. COORDINATION OF FEDERAL, STATE, AND LOCAL AUTHORITY.

[47 U.S.C. 556]

[(a) Nothing in this title shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this title.

[(b) Nothing in this title shall be construed to restrict a State from exercising jurisdiction with regard to cable services consistent with this title.

[(c) Except as provided in section 637, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this Act shall be deemed to be preempted and superseded.

[(d) For purposes of this section, the term "State" has the meaning given such term in section 3.

[SEC. 637. EXISTING FRANCHISES.

[47 U.S.C. 557]

[(a) The provisions of—

[(1) any franchise in effect on the effective date of this title, including any such provisions which relate to the designation, use, or support for the use of channel capacity for public, educational, or governmental use, and

[(2) any law of any State (as defined in section 3) in effect on the date of the enactment of this section, or any regulation promulgated pursuant to such law, which relates to such designation, use or support of such channel capacity,

shall remain in effect, subject to the express provisions of this title, and for not longer than the then current remaining term of the franchise as such franchise existed on such effective date.

[(b) For purposes of subsection (a) and other provisions of this title, a franchise shall be considered in effect on the effective date of this title if such franchise was granted on or before such effective date.]

SEC. [638.] *637.* CRIMINAL AND CIVIL LIABILITY.

[47 U.S.C. 558]

Nothing in this title shall be deemed to affect the criminal or civil liability of [cable] *video service* programmers or [cable operators] *video service providers* pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that [cable operators] *video service providers* shall not incur any such liability for any program carried on any channel designated for public, educational, governmental use or on any other channel ob-

tained under section 612 or under similar arrangements unless the program involves obscene material.

SEC. [639.] *638.* OBSCENE PROGRAMMING.

[47 U.S.C. 559]

Whoever transmits over any [cable] *video service* system any matter which is obscene or otherwise unprotected by the Constitution of the United States shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

SEC. [640.] *639.* SCRAMBLING OF [CABLE] *VIDEO* CHANNELS FOR NON-SUBSCRIBERS.

[47 U.S.C. 560]

(a) SUBSCRIBER REQUEST.—Upon request by a [cable service] *video service* subscriber, a [cable operator] *video service provider* shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it.

(b) DEFINITION.—As used in this section, the term "scramble" means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.

SEC. [641.] *640.* SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING.

[47 U.S.C. 561]

(a) REQUIREMENT.—In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) IMPLEMENTATION.—Until a multichannel video programming distributor complies with the requirement set forth in subsection (a), the distributor shall limit the access of children to the programming referred to in that subsection by not providing such programming during the hours of the day (as determined by the Commission) when a significant number of children are likely to view it.

(c) DEFINITION.—As used in this section, the term "scramble" means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.

SEC. 641. REDLINING.

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

(b) ENFORCEMENT.—

(1) STATE ATTORNEY GENERAL ENFORCEMENT.—This section may be enforced by the State attorney general through a complaint-initiated adjudication process under which a complaint may be filed by a resident of the franchising area who is aggrieved by a violation of subsection (a) or by a franchising authority on behalf of residents of its franchise area. Within 180 days after receiving the resident's or franchising authority's complaint, a State attorney general shall act on such a com-

plaint either by filing a complaint with a court of competent jurisdiction or notifying the resident or franchising authority that the State attorney general will not file such a complaint.

(2) EVALUATION OF COMPLAINT.—The totality of the video service provider's deployments in its service areas shall be considered in any adjudication pursuant to an enforcement action under this subsection.

(c) REMEDIES.—If a court determines that a video service provider has violated subsection (a) it—

(1) shall ensure that the video service provider remedies any violation of subsection (a); and

(2) may assess a civil penalty in such amount as may be authorized under State law for the franchising area in which the violation occurred for violation of that State's antidiscrimination laws.

(d) LIMITATIONS.—

(1) NATURAL AND TECHNOLOGICAL BARRIERS.—It is not a violation of subsection (a) if video service is denied because technical feasibility, commercial feasibility, operational limitations, or physical barriers preclude the effective provision of video service.

(2) QUOTAS, GOALS, OR TIMETABLES.—Nothing in this section authorizes the use of quotas, goals, or timetables as a remedy.

(e) REPORTS.—

(1) ANNUAL REPORTS TO COMMISSION.—Beginning 3 years after the date of enactment of the Video Competition and Savings for Consumers Act of 2006, each franchising authority shall report to the Commission on video service provider deployment in its franchise area. The Commission shall develop and make available to franchising authorities a standardized, electronic data-based, report form to be used in complying with the requirements of this paragraph. A video service provider shall provide such information to the franchising authority as is needed to complete the report.

(2) COMMISSION REPORT TO CONGRESS.—Beginning 4 years after the date of enactment of the Video Competition and Savings for Consumers Act of 2006, and every 4 years thereafter, the Commission shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on the buildout of video service.

SEC. 642. IP-ENABLED VIDEO SERVICE.

(a) IN GENERAL.—Notwithstanding any other provision of law, IP-enabled video service is an interstate service and is subject only to Federal regulations.

(b) IP-ENABLED VIDEO SERVICE DEFINED.—In this section, the term "IP-enabled video service" means a video service provided over the public Internet utilizing Internet protocol, or any successor protocol that is not offered by, or not offered as part of a package of video services offered by, a video service provider or its affiliate.

(c) COMMISSION AUTHORITY.—The commission may not impose any rule on, apply any regulation to, or otherwise regulate the offering or provision of IP-enabled video service.

(d) LAW ENFORCEMENT.—Nothing in this section shall be construed to interfere with any lawful activity of a law enforcement agency or to limit the application of any law the violation of which is punishable by a fine, imprisonment, or both.

(e) NO EFFECT ON TAX LAWS.—Nothing in this section shall be construed to modify, impair, supersede, or authorize the modification, impairment, or supersession of, any State or local tax law.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 705. UNAUTHORIZED PUBLICATION OR USE OF COMMUNICATIONS.

[47 U.S.C. 605]

(a) PRACTICES PROHIBITED.—Except as authorized by chapter 119, title 18, United States Code, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator

(b) EXCEPTIONS.—The provisions of subsection (a) shall not apply to the interception or receipt by any individual, or the assisting (including the manufacture or sale) of such interception or receipt, of any satellite cable programming for private viewing if—

(1) the programming involved is not encrypted; and

(2)(A) a marketing system is not established under which—

(i) an agent or agents have been lawfully designated for the purpose of authorizing private viewing by individuals, and

(ii) such authorization is available to the individual involved from the appropriate agent or agents; or

(B) a marketing system described in subparagraph (A) is established and the individuals receiving such programming has obtained authorization for private viewing under that system.

(c) SCRAMBLING OF PUBLIC BROADCASTING SERVICE PROGRAMMING.—No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "satellite cable programming" means video programming which is transmitted via satellite and which is primarily intended for the direct receipt by [cable operators for their retransmission to cable subscribers;] *cable operators or video service providers (as defined in section 602 of this Act) for their retransmission to subscribers;*

(2) the term "agent", with respect to any person, includes an employee of such person;

(3) the term "encrypt", when used with respect to satellite cable programming, means to transmit such programming in a form whereby the aural and visual characteristics (or both) are modified or altered for the purpose of preventing the unauthorized receipt of such programming by persons without authorized equipment which is designed to eliminate the effects of such modification or alteration;

(4) the term "private viewing" means the viewing for private use in an individual's dwelling unit by means of equipment, owned or operated by such individual, capable of receiving satellite cable programming directly from a satellite;

(5) the term "private financial gain" shall not include the gain resulting to any individual for the private use in such individual's dwelling unit of any programming for which the individual has not obtained authorization for that use; and

(6) the term "any person aggrieved" shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (e), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.

(e) PENALTIES; CIVIL ACTIONS; REMEDIES; ATTORNEY'S FEES AND COSTS; COMPUTATION OF DAMAGES; REGULATION BY STATE AND LOCAL AUTHORITIES.—

(1) Any person who willfully violates subsection (a) shall be fined not more than $2,000 or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a) willfully and for purposes of direct or indirect commercial advantage or private financial gain shall be fined not more than $50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.

(3)(A) Any person aggrieved by any violation of subsection (a) or paragraph (4) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(B) The court—

(i) may grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a);

(ii) may award damages as described in subparagraph (C); and

(iii) shall direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(C)(i) Damages awarded by any court under this section shall be computed, at the election of the aggrieved party, in accordance with either of the following subclauses;

(I) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(II) the party aggrieved may recover an award of statutory damages for each violation of subsec. (a) involved in the action in a sum of not less than $1,000 or more than $10,000, as the court considers just, and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just.

(ii) In any case in which the court finds that the violation was committed willfully and for purposes of direct or indirect commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than $100,000 for each violation of subsection (a).

(iii) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than $250.

(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

(5) The penalties under this subsection shall be in addition to those prescribed under any other provision of this title.

(6) Nothing in this subsection shall prevent any State, or political subdivision thereof, from enacting or enforcing any laws with respect to the importation, sale, manufacture, or distribution of equipment by any person with the intent of its use to assist in the interception or receipt of radio communications prohibited by subsection (a).

(f) RIGHTS, OBLIGATIONS, AND LIABILITIES UNDER OTHER LAWS UNAFFECTED.—Nothing in this section shall affect any right, obligation, or liability under title 17, United States Code, any rule, regulation, or order thereunder, or any other applicable Federal, State, or local law.

(g) UNIVERSAL ENCRYPTION STANDARD.—The Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account—

(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

(2) incorporation of technological enhancements, including advanced television formats;

(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

(h) RULEMAKING FOR ENCRYPTION STANDARD.—If the Commission finds, based on the information gathered from the inquiry required by subsection (g), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.

SEC. 712. SYNDICATED EXCLUSIVITY.

[47 U.S.C. 612]

(a) The Federal Communications Commission shall initiate a combined inquiry and rulemaking proceeding for the purpose of—

(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private home viewing of secondary transmissions by satellite of broadcast station signals similar to the rules issued by the Commission with respect to syndicated exclusivity [and cable television;] *cable television, and video service (as defined in section 602 of this Act);* and

(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act.

SEC. 714. TELECOMMUNICATIONS DEVELOPMENT FUND.

[47 U.S.C. 614]

(a) PURPOSE OF SECTION.—It is the purpose of this section—

(1) to promote access to capital for small businesses in order to enhance competition in the telecommunications industry;

(2) to stimulate new technology development, and promote employment and training; and

(3) to support universal service and promote delivery of telecommunications services to underserved rural and urban areas.

(b) ESTABLISHMENT OF FUND.—There is hereby established a body corporate to be known as the Telecommunications Development Fund, which shall have succession until dissolved. The Fund shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof.

(c) BOARD OF DIRECTORS.—

(1) COMPOSITION OF BOARD; CHAIRMAN.—The Fund shall have a Board of Directors which shall consist of 7 persons appointed by the Chairman of the Commission. Four of such directors shall be representative of the private sector and three of such directors shall be representative of the Commission, the Small Business Administration, and the Department of the Treasury, respectively. The Chairman of the Commission shall appoint one of the representatives of the private sector to serve as chairman of the Fund within 30 days after the date of enactment of this section, in order to facilitate rapid creation and implementation of the Fund. The directors shall include members with experience in a number of the following areas: finance, investment banking, government banking, communications law and administrative practice, and public policy.

(2) TERMS OF APPOINTED AND ELECTED MEMBERS.—The directors shall be eligible to serve for terms of 5 years, except of the initial members, as designated at the time of their appointment—

(A) 1 shall be eligible to service for a term of 1 year;

(B) 1 shall be eligible to service for a term of 2 years;

(C) 1 shall be eligible to service for a term of 3 years;

(D) 2 shall be eligible to service for a term of 4 years; and

(E) 2 shall be eligible to service for a term of 5 years (1 of whom shall be the Chairman).Directors may continue to serve until their successors have been appointed and have qualified.

(3) MEETINGS AND FUNCTIONS OF THE BOARD.—The Board of Directors shall meet at the call of its Chairman, but at least quarterly. The Board shall determine the general policies which shall govern the operations of the Fund. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the officers of the Fund and shall discharge all such functions, powers, and duties.

(d) ACCOUNTS OF FUND.—The Fund shall maintain its accounts at a financial institution designated for purposes of this section by the Chairman of the Board (after consultation with the Commission and the Secretary of the Treasury). The accounts of the Fund shall consist of—

(1) interest transferred pursuant to section 309(j)(8)(C) of this Act;

(2) such sums as may be appropriated to the Commission for advances to the Fund;

(3) any contributions or donations to the Fund that are accepted by the Fund; and

(4) any repayment of, or other payment made with respect to, loans, equity, or other extensions of credit made from the Fund.

(e) USE OF FUND.—All moneys deposited into the accounts of the Fund shall be used solely for—

(1) the making of loans, investments, or other extensions of credits to eligible small businesses in accordance with subsection (f);

(2) the provision of financial advice to eligible small businesses;

(3) expenses for the administration and management of the Fund (including salaries, expenses, and the rental or purchase of office space for the fund);

(4) preparation of research, studies, or financial analyses; and

(5) other services consistent with the purposes of this section.

(f) LENDING AND CREDIT OPERATIONS.—Loans or other extensions of credit from the Fund shall be made available to an eligible small business on the basis of—

(1) the analysis of the business plan of the eligible small business;

(2) the reasonable availability of collateral to secure the loan or credit extension;

(3) the extent to which the loan or credit extension promotes the purposes of this section; and

(4) other lending policies as defined by the Board.

(g) RETURN OF ADVANCES.—Any advances appropriated pursuant to subsection (d)(2) shall be disbursed upon such terms and conditions (including conditions relating to the time or times of repayment) as are specified in any appropriations Act providing such advances.

(h) GENERAL CORPORATE POWERS.—The Fund shall have power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated, for the purposes of the Fund;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Fund;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

(9) to enter into contracts, to execute instruments, to incur liabilities, to make loans and equity investment, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(i) ACCOUNTING, AUDITING, AND REPORTING.—The accounts of the Fund shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants. A report of each such audit shall be furnished to the Secretary of the Treasury and the Commission. The representatives of the Secretary and the Commission shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and necessary to facilitate the audit.

(j) REPORT ON AUDITS BY TREASURY.—A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the

Fund, together with such recommendations with respect thereto as the Secretary may deem advisable.

(k) DEFINITIONS.—As used in this section:

(1) ELIGIBLE SMALL BUSINESS.—The term "eligible small business" means business enterprises engaged in the telecommunications industry that have $50,000,000 or less in annual revenues, on average over the past 3 years prior to submitting the application under this section.

(2) FUND.—The term "Fund" means the Telecommunications Development Fund established pursuant to this section.

(3) TELECOMMUNICATIONS INDUSTRY.—The term "telecommunications industry" means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, *video service,* computer, data transmission, software, programming, advanced messaging, and electronics businesses.

SEC. 715. RIGHTS AND OBLIGATIONS OF IP-ENABLED VOICE SERVICE PROVIDERS.

(a) IN GENERAL.—A facilities-based IP-enabled voice service provider shall have the same rights, duties, and obligations, including any obligation imposed under section 276, as a requesting telecommunications carrier under sections 251 and 252, if the provider elects to assert such rights. A telecommunications carrier may not refuse to transport or terminate IP-enabled voice traffic solely on the basis that it is IP-enabled. A provider originating, transmitting, or terminating IP-enabled voice traffic shall not be exempted from paying compensation for interstate traffic owed to another provider or carrier solely on the basis that such traffic is IP-enabled, and any obligations to pay compensation with respect to traffic that originates or terminates on the public switched telephone network shall be reciprocal, including any payment to an IP-enabled voice service provider that receives traffic from, or sends traffic to, the public switched telephone network.

(b) DISABLED ACCESS.—An IP-enabled voice service provider or a manufacturer of IP-enabled voice service equipment shall have the same rights, duties, and obligations as a telecommunications carrier or telecommunications equipment manufacturer, respectively, under sections 225, 255, and 710 of the Act. Within 1 year after the date of enactment of the Internet and Universal Service Act of 2006, the Commission, in consultation with the Architectural and Transportation Barriers Compliance Board, shall prescribe such regulations as are necessary to implement this section. In prescribing the regulations, the Commission shall take into account the differences between IP-enabled voice service and circuit-switched communications, and the functionalities required by the disabled community. Every 2 years after the date of enactment of the Internet and Universal Service Act of 2006, the Commission shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives that assesses the level of compliance with this section and evaluates the extent to which any accessibility barriers still exist with respect to new technologies and hearing aid compatibility.

(c) IP-ENABLED EMERGENCY RESPONSE SYSTEMS.—Prior to installation or activation of an IP-enabled voice service for a customer, an

IP-enabled voice service provider shall provide clear and conspicuous notice to the customer that—

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

(2) such customer should notify his or her emergency response system provider as soon as the IP-enabled voice service is installed; and

(3) a battery backup may be required for customer premises equipment installed in connection with the IP-enabled voice service in order for the signaling of such system to function in the event of a power outage.

(e) NO EFFECT ON TAX LAWS.—Nothing in this section shall be construed to modify, impair, supersede, or authorize the modification, impairment, or supersession of, any State or local tax law.

(f) DEFINITIONS.—In this section:

(1) EMERGENCY RESPONSE SYSTEM.—The term "emergency response system" means an alarm or security system, or personal security or medical monitoring system, that is connected to an emergency response center by means of a telecommunications carrier or IP-enabled voice service provider.

(2) EMERGENCY RESPONSE CENTER.—The term "emergency response center" means an entity that monitors transmissions from an emergency response system.

(3) FACILITIES-BASED.—The term "facilities-based" includes an IP-enabled voice service provider with control and operation within a local access transport area of—

(A) communications switching and routing equipment;

(B) long-haul trunks; or

(C) local transmission facilities.

(4) IP-ENABLED VOICE SERVICE.—The term "IP-enabled voice service" means the provision of real-time 2-way voice communications offered to the public, or such classes of users as to be effectively available to the public, transmitted through customer premises equipment using Internet protocol, or a successor protocol, for a fee (whether part of a bundle of services or offered separately) with interconnection capability such that the service can originate traffic to, and terminate traffic from, the public switched telephone network.

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