

[STAFF WORKING DRAFT]

MAY 24, 2006

109TH CONGRESS
2ND SESSION

S. _____

To provide for increased competition in telecommunication services, promote the expanded use of broadband services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY _____, 2006

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

A BILL

To provide for increased competition in telecommunication services, promote the expanded use of broadband services, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Competition
5 and Broadband Promotion Act”.

1 SEC. 2. TABLE OF CONTENTS.

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

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—PROMOTING VIDEO COMPETITION

SUBTITLE A—VIDEO FRANCHISING

- Sec. 101. Application of title VI to all facilities-based providers of video programming.
- Sec. 102. Accelerated disposition of franchise applications.
- Sec. 103. Conforming amendments; Effective date.

SUBTITLE B—DIGITAL CONTENT PROTECTION; RELATED MATTERS

- Sec. 151. Protection of digital broadcast video content.
- Sec. 152. Protection of digital audio broadcasting content.
- Sec. 153. Elimination of terrestrial loophole.
- Sec. 154. DBS services requirements.
- Sec. 155. Internet video.
- Sec. 156. TV Act/video description.

TITLE II—PROMOTING VOICE AND DATA COMPETITION

- Sec. 201. Internet nondiscrimination/network neutrality requirements.
- Sec. 202. Obligations of incumbent local exchange carriers.
- Sec. 203. Stand alone broadband requirement.
- Sec. 204. Better data on local competition in different product markets.
- Sec. 205. Improved enforcement options.
- Sec. 206. Competition in special access markets.
- Sec. 207. Customer contracts.
- Sec. 208. Competitive alternative pricing.
- Sec. 209. Forbearance.
- Sec. 210. Definitions.

TITLE III—ENCOURAGING BROADBAND DEPLOYMENT AND BASIC COMMUNICATIONS RESEARCH

- Sec. 301. Eligible broadcast television spectrum made available for wireless use.
- Sec. 302. Municipal broadband.
- Sec. 303. Federal information and communications technology research.
- Sec. 304. Community broadband grants for unserved areas and underserved communities.
- Sec. 305. Direct FCC to revisit broadband speeds.
- Sec. 306. Direct census to include question as part of its American Community Survey.

TITLE IV—REFORM AND STRENGTHEN USF

- Sec. 401. Universal Service Fund contribution requirements.
- Sec. 402. Treatment of substitute services under section 254.
- Sec. 403. Phantom traffic.
- Sec. 404. Permanent extension of ADA exemption.
- Sec. 405. Intercarrier compensation.

- Sec. 406. Conditions for designation as an eligible telecommunications carrier; Broadband requirement..
- Sec. 407. Rural health care support mechanisms.
- Sec. 408. Telecommunications services for libraries.
- Sec. 409. Audits.

1 **TITLE I—PROMOTING VIDEO**
2 **COMPETITION**
3 **Subtitle A—Video Franchising**

4 **SEC. 101. APPLICATION OF TITLE VI TO ALL FACILITIES-**
5 **BASED PROVIDERS OF VIDEO PROGRAM-**
6 **MING.**

7 (a) CABLE OPERATOR.—Section 602(5)(A) of the
8 Communications Act of 1934 (47 U.S.C. 522(5)(A)) is
9 amended by inserting “(regardless of whether such person
10 provides such service separately or combined with a tele-
11 communications service or information service)” after
12 “over a cable system”.

13 (b) CABLE SERVICE.—Section 602(6) of the Commu-
14 nications Act of 1934 (47 U.S.C. 522(6)) is amended to
15 read as follows:

16 “(6) the term ‘cable service’ means the trans-
17 mission to subscribers of video programming or
18 other programming service provided through a cable
19 system (including any subscriber interaction re-
20 quired for the selection or use of such video pro-
21 gramming or other programming service), except to
22 the extent that such video programming or other
23 programming service is provided as part of an Inter-

1 net access service (as such term is defined in section
2 231(e)(4), and is not video programming provided
3 via an Internet access service that is made available
4 by a cable operator solely to its cable subscribers.”.

5 (c) CABLE SYSTEM.—Section 602(7) of the Commu-
6 nications Act of 1934 (47 U.S.C. 522(7)) is amended—

7 (1) by striking “which includes video program-
8 ming”; and

9 (2) by inserting after “cable service” the fol-
10 lowing: “, without regard to delivery technology, in-
11 cluding Internet protocol technology or any suc-
12 cessor technology, which is located at least in part
13 in the public rights-of-way”.

14 **SEC. 102. ACCELERATED DISPOSITION OF FRANCHISE AP-**
15 **PLICATIONS.**

16 Part III of title VI of the Communications Act of
17 1934 (47 U.S.C. 521 et seq.) is amended by adding at
18 the end the following new sections:

19 **“SEC. 630. DEADLINES FOR FRANCHISING AUTHORITY AP-**
20 **PROVALS.**

21 “(a) ACCELERATED APPROVAL.—If an applicant for
22 an additional competitive franchise is an entity previously
23 authorized to occupy the public rights-of-way, or an affil-
24 iate of such entity, and proposes in writing to provide
25 cable services using existing wireline facilities within the

1 public rights-of-way in the franchise area, and to provide
2 cable service on the same terms and conditions as those
3 contained in the franchise most recently granted to the
4 incumbent cable operator for each local geographic area,
5 respectively, covered by the application, the franchising
6 authority shall grant the application within 30 business
7 days of receipt of the completed application from the oper-
8 ator, or at the first regular business meeting following
9 public notice of the operator's application, whichever is
10 later. If the franchising authority fails to act within the
11 specified period, the application shall be deemed granted
12 unless the applicant and the franchising authority have
13 agreed to an extension of the deadline.

14 “(b) STANDARD FRANCHISE.—

15 “(1) ELECTION.—A person that is eligible
16 under paragraph (6) may elect to obtain a franchise
17 under section 631 (hereinafter, a ‘standard fran-
18 chise’) for a franchise area from a franchising au-
19 thority in lieu of a negotiating the terms and condi-
20 tions of a franchise with a franchising authority.

21 “(2) PREREQUISITE NEGOTIATIONS.—

22 “(A) IN GENERAL.—Prior to applying for
23 a standard franchise, an eligible person shall re-
24 quest and make itself available to negotiate the

1 terms and conditions of a franchise with a fran-
2 chising authority.

3 “(B) EXCEPTION.— The prerequisite nego-
4 tiation required in subparagraph (A) shall not
5 be applicable if a franchising authority refuses
6 to engage in negotiations at the request of an
7 applicant or if the applicant already holds any
8 cable franchise from the franchising authority
9 and is eligible under subsection (b)(6)(B) of
10 this section.

11 “(3) NOTICE.—If a mutually acceptable nego-
12 tiated franchise agreement has not been executed 60
13 days after the applicant makes such request, the ap-
14 plicant shall file with the franchising authority writ-
15 ten notice of its election to provide cable service
16 under a standard franchise unless both the franchise
17 authority and the applicant mutually agree to an ex-
18 tension of time for such deadline. Such notice shall
19 be filed at least 30 days before the cable operator
20 commences providing cable service pursuant to the
21 standard franchise, and shall contain the informa-
22 tion required by paragraph (4). A cable operator
23 that files such notice under this section shall update
24 any information contained in such notice that is no

1 longer accurate and correct throughout the term of
2 the standard franchise.

3 “(4) CONTENTS OF NOTICE.—The notice re-
4 quired by paragraph (3) shall contain—

5 “(A) the name under which the operator is
6 offering or intends to offer cable service;

7 “(B) the names and business addresses of
8 the directors and principal executive officers, or
9 the persons performing similar functions, of the
10 operator;

11 “(C) the location of the operator’s prin-
12 cipal business office;

13 “(D) the name, business address, elec-
14 tronic mail address, and telephone and fax
15 number of the operator’s local agent;

16 “(E) a declaration by the operator that the
17 operator is eligible under subsection (d) to ob-
18 tain a standard franchise under this section;

19 “(F) a geographical identification of the
20 franchise area in which the operator intends to
21 offer cable service pursuant to the standard
22 franchise, including an identification of the ini-
23 tial service area within the franchise area where
24 the operator intends to offer cable service;

1 “(G) a declaration by the operator that the
2 operator will comply with the lawful and non-
3 discriminatory rights-of-way requirements of
4 the franchising authority under subsection (f);

5 “(H) a declaration by the person that it
6 will comply with all lawful and nondiscrim-
7 inatory consumer protection and customer serv-
8 ice rules authorized under section 632(b); and

9 “(I) a certification that the information
10 contained in the notice is accurate and correct
11 and that the operator will immediately notify
12 the franchise authority of any material changes
13 in that information during the franchise term.

14 “(5) EFFECTIVENESS.—

15 “(A) EFFECTIVE DATE.—A standard fran-
16 chise under this section shall be effective with
17 respect to any franchise area 30 days after the
18 date of the filing of a completed notice under
19 paragraph (3).

20 “(B) EFFECT ON STATE AND LOCAL
21 LAW.—With respect to any person that obtains
22 a standard franchise, any State or local law,
23 regulation, or ordinance requiring such a cable
24 operator to obtain a franchise other than a
25 standard franchise is deemed preempted and

1 superseded except as provided under subpara-
2 graph (C). If a cable operator that was pre-
3 viously providing cable service in such area pur-
4 suant to a negotiated franchise obtains a stand-
5 ard franchise for a franchise area, any fran-
6 chise agreement under section 621 or any State
7 or local law, regulation, or ordinance for the
8 provision of cable service by such operator in
9 such franchise area shall be deemed null and
10 void.

11 “(C) REVERSION TO TRADITIONAL FRAN-
12 CHISE UPON WITHDRAWAL OF COMPETITIVE
13 FRANCHISE OPERATOR.—During the term of a
14 standard franchise, if a cable operator providing
15 cable service pursuant to a standard franchise
16 becomes the sole provider of cable service within
17 a franchise area, the franchise authority have
18 the right to accelerate the term of the standard
19 franchise via notice to such cable operator, but
20 shall not be permitted to make the termination
21 of such standard franchise earlier than 180
22 days after such notice is received by the cable
23 operator.

24 “(6) ELIGIBILITY FOR STANDARD FRAN-
25 CHISE.—The following persons or groups are eligible

1 to obtain a standard franchise under this section on
2 or after the date of enactment of the Consumer
3 Competition and Broadband Promotion Act:

4 “(A) NEW CABLE OPERATORS.—A person
5 that, directly or through an affiliate, has pursu-
6 ant to any Federal, State, or local law, any
7 right, permission, or authority to establish or
8 use lines in or across public rights-of-way with-
9 in the franchise area, which right, permission or
10 authority does not rely on, and is independent
11 of, any cable franchise obtained pursuant to
12 section 621.

13 “(B) EXISTING PROVIDERS OF CABLE
14 SERVICE.—An incumbent cable operator that is
15 providing cable service in a franchise area
16 under a cable franchise obtained pursuant to
17 section 621 may, in its discretion, elect to ter-
18 minate such negotiated franchise and obtain a
19 standard franchise but shall only be eligible for
20 such standard franchise after providing the rel-
21 evant franchise authority with written notice of
22 its election consistent with the requirements of
23 subsections (b)(3) and (b)(4) of this section,
24 and on or after the date that another cable op-
25 erator within the franchise area operating pur-

1 suant to a standard franchise begins offering
2 cable service to more than 5 percent of residen-
3 tial households within such operator's franchise
4 area.

5 “(C) UNAVAILABILITY IN CERTAIN
6 STATES.—A person, group, or cable operator
7 shall not be eligible for a standard franchise in
8 any State in which—

9 “(i) a single franchising authority is
10 solely responsible for the negotiation,
11 issuance and enforcement of franchise re-
12 quirements under section 621 or any State
13 or local law; or

14 “(ii) a cable operator may obtain a
15 franchise by operation of law and in lieu of
16 negotiation under section 621 if—

17 “(I) the terms of such franchise
18 are not inconsistent with the terms re-
19 quired in section 631 of this Act; and

20 “(II) the grant of a such a fran-
21 chise is concurrently available to any
22 other cable operator operating within
23 such franchise authority upon the
24 entry of a new cable operator under
25 such terms.

1 **“SEC. 631. TERMS OF STANDARD FRANCHISE.**

2 “(a) INCLUSION OF REQUIREMENTS.—A standard
3 franchise shall meet all of the requirements of this section.

4 “(b) TERM.—A standard franchise shall be effective
5 in a franchise area for a term of 10 years.

6 “(c) FRANCHISE AREA.—The franchise area for
7 standard franchise shall be the total geographic area in
8 a general purpose political subdivision of a State within
9 which a cable operator was providing cable service on the
10 date of enactment of the Consumer Competition and
11 Broadband Promotion Act or, in the case of an incumbent
12 local exchange carrier (as such term is defined in section
13 251(h)) or affiliate thereof, the area within such subdivi-
14 sion in which such carrier provides telephone exchange
15 service.

16 “(d) PEG AND I-NET REQUIREMENTS.—

17 “(1) CAPACITY.—A cable operator authorized
18 under a standard franchise to provide cable service
19 in a franchise area shall provide the same number
20 of channels for public, educational or governmental
21 use as is provided by the largest cable operator in
22 such franchise area, or, if no such operator exists,
23 then three channels. Upon renewal of a standard
24 franchise, a franchising authority may require a
25 cable operator to increase the channel capacity des-

1 ignated for public, educational, or governmental use.

2 The increase may not exceed the greater of—

3 “(A) 1 channel; or

4 “(B) 10 percent of the public, educational,
5 or governmental channel capacity required of
6 the cable operator before the required increase.

7 “(2) PEG PROGRAMMING.—A cable operator
8 shall ensure that all subscribers receive any public,
9 educational, or governmental programming carried
10 by the operator within the subscriber’s franchise
11 area.

12 “(3) PRODUCTION AND DELIVERY OF PRO-
13 GRAMMING.—The production of any programming
14 provided under this subsection and delivery of such
15 programming to the signal origination point or
16 points shall be the sole responsibility of the fran-
17 chising authority.

18 “(4) INTERCONNECTION; COST-SHARING.—Un-
19 less 2 cable operators (which may include a cable op-
20 erator providing cable service under a standard fran-
21 chise) otherwise agree to the terms for interconnec-
22 tion and cost sharing, such video service providers
23 shall comply with regulations prescribed by the Com-
24 mission providing for—

1 “(A) the interconnection between cable op-
2 erators in a franchise area for transmission of
3 public, educational, or governmental program-
4 ming, without material degradation in signal
5 quality or functionality; and

6 “(B) the reasonable allocation of the costs
7 of such interconnection between such cable op-
8 erators.

9 “(5) DISPLAY OF PROGRAM INFORMATION.—A
10 cable operator authorized under a standard franchise
11 shall display the program information for public,
12 educational, or governmental programming in any
13 print or electronic program guide in the same man-
14 ner in which it displays pro-gram information for
15 other video programming in the franchise area. The
16 video service provider shall not omit public, edu-
17 cational, or governmental programming from any
18 navigational device, guide, or menu containing other
19 video programming that is available to subscribers in
20 the franchise area.

21 “(6) FINANCIAL SUPPORT.—

22 “(A) IN GENERAL.—A franchising author-
23 ity for a franchise area shall require a cable op-
24 erator with a standard franchise providing cable
25 service in that franchise area to pay the fran-

1 chising authority annually, in general support
2 of public, educational, and governmental use
3 and institutional networks (as defined in section
4 611(f)), the greater of—

5 “(i) an amount equal to 1 percent of
6 the cable operator’s annual gross revenues
7 in the franchise area; or

8 “(ii) a fee equivalent to the value, on
9 a per subscriber basis, assessed monthly,
10 of all monetary grants or in-kind services
11 or facilities for public, educational, or gov-
12 ernmental access channels provided annu-
13 ally by the cable service provider in the
14 franchise area with the most cable service
15 subscribers, pursuant to that cable opera-
16 tor’s franchise with the franchising author-
17 ity or other persons as in effect on the
18 date of enactment of the Consumer Com-
19 petition and Broadband Promotion Act.

20 “(B) CALCULATION DATA.—A franchising
21 authority for a franchising area may require a
22 cable operator providing cable service in that
23 franchise area to provide to the franchising au-
24 thority information sufficient to calculate the
25 per-subscriber equivalent fee allowed by sub-

1 paragraph (A)(ii). The information shall be en-
2 titled to treatment as confidential and propri-
3 etary business information. The payments made
4 by a video service provider pursuant to subpara-
5 graph (A) shall be assessed and collected in a
6 manner consistent with section 622.

7 “(7) EXISTING INSTITUTIONAL NETWORKS.—

8 “(A) IN GENERAL.—A franchising author-
9 ity may require a cable operator authorized to
10 provide cable service under a standard franchise
11 to continue to provide any institutional network
12 provided by that cable operator before obtaining
13 such franchise.

14 “(B) COST-SHARING.—If a franchising au-
15 thority requires a cable operator to continue to
16 provide such institutional network pursuant to
17 subparagraph (A), the costs of operating such
18 network shall be borne proportionately by all
19 cable operators serving that franchise area.

20 “(8) EFFECT ON EXISTING LAW.—Except as
21 expressly provided in this subsection, the provisions
22 of section 611 shall apply to a cable operator au-
23 thorized to provide cable service under a standard
24 franchise.

25 “(e) GROSS REVENUES.—In this section:

1 “(1) IN GENERAL.—Subject to paragraphs (2)
2 and (3), the term ‘gross revenues’ means all consid-
3 eration of any kind or nature, including cash, cred-
4 its, property, and in-kind contributions (services or
5 goods) received by the cable operator from the provi-
6 sion of cable service within the franchise area.

7 “(2) INCLUDED ITEMS.—Subject to paragraph
8 (3), the term ‘gross revenues’ shall include the fol-
9 lowing:

10 “(A) all charges and fees paid by sub-
11 scribers for the provision of cable service, in-
12 cluding fees attributable to cable service when
13 sold individually or as part of a package or bun-
14 dle, or functionally integrated, with services
15 other than cable service;

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

18 “(C) compensation received by the cable
19 operator for promotion or exhibition of any
20 products or services over the cable service, such
21 as on ‘home shopping’ or similar programming;

22 “(D) revenue received by the cable oper-
23 ator as compensation for carriage of video pro-
24 gramming or other programming service on
25 that operator’s cable service;

1 “(E) all revenue derived from the cable op-
2 erator’s cable service pursuant to compensation
3 arrangements for advertising; and

4 “(F) any advertising commissions paid to
5 an affiliated third party for cable services ad-
6 vertising.

7 “(3) EXCLUDED ITEMS.—The term ‘gross reve-
8 nues’ shall not include—

9 “(A) any revenue not actually received,
10 even if billed, such as bad debt net of any re-
11 coveries of bad debt;

12 “(B) refunds, rebates, credits, or discounts
13 to subscribers or a municipality to the extent
14 not already offset by subparagraph (A) and to
15 the extent such refund, rebate, credit, or dis-
16 count is attributable to the cable service;

17 “(C) subject to paragraph (4), any reve-
18 nues received by the cable operator or its affili-
19 ates from the provision of services or capabili-
20 ties other than cable service, including tele-
21 communications services, Internet access serv-
22 ices, and services, capabilities, and applications
23 that may be sold as part of a package or bun-
24 dle, or functionally integrated, with cable serv-
25 ice;

1 “(D) any revenues received by the cable
2 operator or its affiliates for the provision of di-
3 rectory or Internet advertising, including yellow
4 pages, white pages, banner advertisement, and
5 electronic publishing;

6 “(E) any amounts attributable to the pro-
7 vision of cable service to customers at no
8 charge, including the provision of such service
9 to public institutions without charge;

10 “(F) any tax, fee, or assessment of general
11 applicability imposed on the customer or the
12 transaction by a Federal, State, or local govern-
13 ment or any other governmental entity, col-
14 lected by the provider, and required to be remit-
15 ted to the taxing entity, including sales and use
16 taxes and utility user taxes;

17 “(G) any forgone revenue from the provi-
18 sion of cable service at no charge to any person,
19 except that any forgone revenue exchanged for
20 trades, barter, services, or other items of value
21 shall be included in gross revenue;

22 “(H) sales of capital assets or surplus
23 equipment;

24 “(I) reimbursement by programmers of
25 marketing costs actually incurred by the cable

1 operator for the introduction of new program-
2 ming; and

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

7 “(4) FUNCTIONALLY INTEGRATED SERVICES.—
8 In the case of a cable service that is bundled or inte-
9 grated functionally with other services, capabilities,
10 or applications, the portion of the cable operator’s
11 revenue attributable to such other services, capabili-
12 ties, or applications shall be included in gross rev-
13 enue unless the cable operator can reasonably iden-
14 tify the division or exclusion of such revenue from
15 its books and records that are kept in the regular
16 course of business.

17 “(5) AFFILIATE REVENUE.—Revenue of an af-
18 filiate shall be included in the calculation of gross
19 revenues to the extent the treatment of such revenue
20 as revenue of the affiliate has the effect (whether in-
21 tentional or unintentional) of evading the payment
22 of franchise fees which would otherwise be paid for
23 cable service.

24 “(f) AUDIT PROCEDURE.—

1 “(1) IN GENERAL.—A franchising authority
2 that believes that it is not receiving the full amount
3 of the franchise fee imposed under this section may
4 commence an audit to ensure compliance with the
5 definition of gross revenue and the calculation of
6 fees under this section. A franchising authority may
7 not conduct such audit more than once during any
8 twelve-month period, and may not request a review
9 for any 12-month period ending more than 48
10 months before the date on which the request is sub-
11 mitted.

12 “(2) EXCLUSIONS.— Notwithstanding any
13 other provision of law or the terms of any franchise
14 agreement, in any audit of the franchise fees paid by
15 a cable operator with respect to any cable system
16 pursuant to this section or a previous franchise
17 agreement, a local franchising authority may request
18 only information directly related to the calculation of
19 gross revenues derived from that cable system.

20 “(g) EFFECT ON EXISTING LAW.—Except as ex-
21 pressly provided in this subsection, the provisions of sec-
22 tion 622 shall apply to a cable operator authorized to pro-
23 vide cable service under a standard franchise.

24 “(h) BUILD-OUT AND ANTI-DISCRIMINATION.—

1 “(1) PROHIBITION.—A cable operator author-
2 ized under a standard franchise to provide cable
3 service in a franchise area shall not deny access to
4 its cable service to any group of potential residential
5 cable service subscribers in such franchise area be-
6 cause of the race, color, religion, national origin, sex,
7 or income of the residents of the local area in which
8 such group resides.

9 “(2) NEGOTIATED BUILD-OUT.—Not later than
10 30 days after the effective date of a standard fran-
11 chise, the cable operator and the franchising author-
12 ity shall establish a reasonable period of time and a
13 deployment schedule within which such operator’s
14 cable system shall become capable of providing cable
15 service to all households in the franchise area. Any
16 such schedule agreed to by the cable operator and
17 the franchise authority shall be incorporated as part
18 of the standard franchise and filed with the relevant
19 franchise authority. Failure to reach agreement on
20 such deployment schedule within 60 days shall result
21 in the incorporation of buildout terms set forth in
22 paragraph (3) as part of the standard franchise
23 agreement for such operator.

24 “(3) DEFAULT BUILD-OUT.—

1 “(A) SCHEDULE.—If such cable operator
2 is an incumbent local exchange carrier (or an
3 affiliate thereof), it shall make its cable system
4 capable of providing cable service to all house-
5 holds in the franchise area in accordance with
6 the following schedule:

7 “(i) To all of the occupied households
8 in an initial service area identified by the
9 cable operator under the notice required in
10 section 630(b)(3) within no less than 18
11 months after the date of the grant of the
12 standard franchise.

13 “(ii) To not less than 65 percent of
14 the households in its franchise area within
15 no more than 3 years after the date of the
16 effective date of the standard franchise.

17 “(iii) To not less than 80 percent of
18 such households in its franchise area with-
19 in no more than 7 years after the effective
20 date of the standard franchise.

21 “(B) SPARSELY POPULATED AREAS.—In
22 determining compliance with the percentages
23 required under this paragraph, the total num-
24 ber of households required to be served in any
25 franchise area shall be reduced by the number

1 of households in any geographic part of the
2 franchise area in which there are fewer than 20
3 households per square mile.

4 “(4) MONITORING AND INSPECTION.—A fran-
5 chising authority municipality shall have the right to
6 monitor and inspect the deployment of cable services
7 by such cable operator. The operator shall submit
8 semiannual progress reports detailing the current
9 provision of cable services in accordance with the de-
10 ployment schedule established pursuant to para-
11 graph (2), and the cable operator’s deployment plans
12 for the next 6 months.

13 “(5) ENFORCEMENT.—If the franchise author-
14 ity determines that a cable operator violated para-
15 graph (1) or the deployment schedule established by
16 paragraph (2), it may—

17 “(A) may assess a civil penalty in such
18 amount as may be authorized under State law
19 for the franchising area in which the violation
20 occurred for violation of its anti discrimination
21 laws; and

22 “(B)(i) revoke the standard franchise if it
23 determines, after notice and an opportunity for
24 a hearing, that the video service provider has
25 willfully violated this section; or

1 “(ii) bring a civil action against the cable
2 operator in any court of competent jurisdiction
3 for damages, an order directing the cable oper-
4 ator to rectify the noncompliance, or other ap-
5 propriate relief.

6 “(6) EFFECT ON EXISTING LAW.—This sub-
7 section shall apply to a cable operator authorized
8 under a standard franchise to provide cable service
9 in a franchise area, in lieu of paragraphs (3) and
10 (4)(A) of subsection 621(a).

11 “(j) TITLE VI APPLICABILITY.—Except as expressly
12 provided in this section, the requirements of title VI shall
13 apply to a cable operator authorized to provide cable serv-
14 ice under a standard franchise.

15 “(k) INCORPORATION OF STANDARD TERMS.—A
16 franchise authority may include other standard terms or
17 conditions as part of its standard franchise, provided how-
18 ever that such standard terms—

19 “(1) are publicly available to a person or group
20 applying for a standard franchise, and

21 “(2) are materially equivalent to terms and con-
22 ditions that are included in the franchise agreements
23 of all other cable operators providing cable service
24 within the relevant franchise area.

1 **SEC. 103. CONFORMING AMENDMENTS; EFFECTIVE DATE.**

2 (a) **EXCLUSION OF PEG SUPPORT FROM DEFINITION**
3 **OF FRANCHISE FEE.**—Section 622(g)(2) of the Commu-
4 nications Act of 1934 (47 U.S.C. 542(g)(2)) is amended—

5 (1) by striking “in the case of any franchise in
6 effect on the date of enactment of this title,” in sub-
7 paragraph (B); and

8 (2) by striking subparagraph (C) and inserting
9 the following:

10 “(C) any amounts required to be paid by
11 a cable operators pursuant to section
12 631(d)(5);”.

13 (b) **EFFECTIVE DATE.**—This Act and the amend-
14 ments made by this Act shall take effect 120 days after
15 date of enactment.

16 (c) **REGULATIONS.**—Prior to such effective date, the
17 Federal Communications Commission shall, as necessary,
18 adopt regulations under title VI or other provisions of the
19 Communications Act of 1934 to reflect the amendments
20 made by this Act.

1 **Subtitle B—Digital Content**
2 **Protection; Related Matters**

3 **SEC. 151. PROTECTION OF DIGITAL BROADCAST VIDEO**
4 **CONTENT.**

5 (a) IN GENERAL.—Section 303 of the Communica-
6 tions Act of 1934 (47 U.S.C. 303) is amended by adding
7 at the end the following:

8 “(z) Have authority with respect to digital television
9 receivers to adopt such regulations and certifications as
10 are necessary to implement the Report and Order in the
11 matter of Digital Broadcast Content Protection, FCC 03–
12 273, as ratified by the Congress in section 102(b) of the
13 Consumer Competition and Broadband Promotion Act,
14 with the exclusive purpose of limiting the indiscriminate
15 redistribution of digital television content over the Inter-
16 net or similar distribution platforms, including the author-
17 ity to reconsider, amend, repeal, supplement, and other-
18 wise modify any such regulations and certifications, in
19 whole or in part, only for that purpose.”.

20 (b) RATIFICATION OF FCC REPORT AND ORDERS.—
21 The Report and Order in the matter of Digital Broadcast
22 Content Protection, FCC 03–273, and the Order in the
23 matter of Digital Output Protection Technology and Re-
24 cording Method Certifications, FCC 04–193, are ratified,
25 subject to the limitations set forth in subsection (d), and

1 shall become effective 12 months after the date of enact-
2 ment of this Act.

3 (c) EXPEDITED PROCEEDING FOR CERTIFYING
4 TECHNOLOGIES FOR USE IN DISTANCE EDUCATION.—
5 Within 30 days after the date of enactment of this Act,
6 the Federal Communications Commission shall initiate a
7 further proceeding for the approval of digital output pro-
8 tection technologies and recording methods for use in the
9 course of distance learning activities. The proceeding shall
10 be conducted in accordance with the expedited procedures
11 established for the Interim Approval of Authorized Digital
12 Output Protection Technologies and Authorized Recording
13 Methods in the Report and Order described in subsection
14 (b). The proceeding shall have no effect on certifications
15 made pursuant to the Order in the matter of Digital Out-
16 put Protection Technology and Recording Method Certifi-
17 cations described in subsection (b), as ratified in that sub-
18 section.

19 (d) LIMITATIONS.—

20 (1) IN GENERAL.—Nothing in this Act or sec-
21 tion 303(z) of the Communications Act of 1934 (47
22 U.S.C. 303(z)), or in regulations of the Commission
23 adopted pursuant thereto, shall—

24 (A) limit the Commission’s authority to ap-
25 prove digital output protection technologies and

1 recording methods that allow for the redistribu-
2 tion of digital broadcast content within the
3 home or similar environment, or the use of the
4 Internet to transmit digital broadcast content,
5 where such technologies and recording methods
6 adequately protect such content from indis-
7 criminate redistribution; or

8 (B) be construed to affect rights, remedies,
9 limitations, or defenses to copyright infringe-
10 ment, including fair use, under title 17, United
11 States Code.

12 (2) USE OF REDISTRIBUTION CONTROL
13 DESCRIPTOR.—Licensees of television broadcast sta-
14 tions may not utilize the Redistribution Control
15 Descriptor, as adopted by the Report and Order de-
16 scribed in subparagraph (b), to limit the redistribu-
17 tion of news and public affairs programming the pri-
18 mary commercial value of which depends on timeli-
19 ness. The Federal Communications Commission
20 shall allow each broadcaster or broadcasting network
21 to determine whether the primary commercial value
22 of a particular news program depends on timeliness.
23 The Commission may review any such determination
24 by a broadcaster or broadcasting network if it re-
25 ceives bona fide complaints alleging, or otherwise

1 has reason to believe, that particular broadcast dig-
2 ital television content has violated this subsection.

3 (3) PROPERTY RIGHTS.—The Commission shall
4 require that any authorized redistribution control
5 technology and any authorized recording method
6 technology approved by the Commission under this
7 section that is publicly offered for adoption by li-
8 censees, be licensed on reasonable and nondiscrim-
9 inatory terms and conditions, including terms pre-
10 serving a licensee’s ability to assert any patent
11 rights necessary for implementation of the licensed
12 technology.

13 **SEC. 152. PROTECTION OF DIGITAL AUDIO BROADCASTING**
14 **CONTENT.**

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

17 **“SEC. 342. MARKETPLACE ADOPTION OF DIGITAL AUDIO**
18 **BROADCAST PROTECTION TECHNOLOGY.**

19 “(a) ADOPTION OF DIGITAL AUDIO BROADCAST
20 PROTECTION TECHNOLOGY IN THE MARKETPLACE.—Li-
21 censees and permittees of the Commission providing dig-
22 ital audio broadcast service, and providers of digital audio
23 broadcast technology approved by the Commission, uti-
24 lizing the in-band, on-channel technical standard for dig-
25 ital audio broadcast transmissions under consideration in

1 MM Docket No. 99–235, or any successor regulations,
2 shall adopt in the marketplace a digital audio broadcast
3 protection technology that prevents the disaggregation and
4 indiscriminate redistribution of content contained in such
5 transmissions and in reception devices capable of receiving
6 such digital audio broadcast transmissions before recep-
7 tion devices capable of such disaggregation or indiscrimi-
8 nate redistribution are marketed or made available in
9 interstate commerce.

10 “(b) LIMITATIONS.—The digital audio broadcast pro-
11 tection technology adopted in the marketplace pursuant
12 to subsection (a)—

13 “(1) shall be applied in a manner consistent
14 with title 17, United States Code, including the fair
15 use provisions contained in section 107 of that title;

16 “(2) shall be developed in conjunction with
17 copyright owners and other affected stakeholders;

18 “(3) shall not make obsolete devices already
19 manufactured and distributed in the marketplace be-
20 fore the adoption of such digital audio broadcast
21 protection technology; and

22 “(4) shall be licensed on reasonable and non-
23 discriminatory terms.

24 “(c) NO DELAY IN THE ROLLOUT OF HD RADIO.—
25 Nothing in this section shall delay the adoption of final

1 operational rules for digital audio broadcasting by the
2 Commission.

3 “(d) ACTIVITIES OF PERFORMING RIGHTS AND ME-
4 CHANICAL RIGHTS ORGANIZATIONS.—Nothing shall pre-
5 clude or prevent a performing rights organization or a me-
6 chanical rights organization, or any entity owned in whole
7 or in part by, or acting on behalf of, such organizations,
8 from monitoring public performances or other uses of
9 copyrighted works contained in such transmissions. The
10 Commission may require that any such organization or en-
11 tity be given a license on either a gratuitous basis or for
12 a de minimus fee to cover only the reasonable costs to
13 the licensor of providing the license, and on reasonable,
14 non-discriminatory terms, to access and retransmit as nec-
15 essary any content contained in such transmissions pro-
16 tected by content protection or similar technologies, pro-
17 vided that such licenses are for purposes of carrying out
18 the activities of such organizations or entities in moni-
19 toring the public performance or other uses of copyrighted
20 works and that such organizations or entities employ rea-
21 sonable methods to protect any such content accessed
22 from further distribution.

23 “(e) RULEMAKING.—The Commission may adopt
24 rules clarifying and implementing the provisions of this
25 section, but may not approve any digital audio content

1 protection technology developed pursuant to subsection (a)
2 except to the extent that the technology generates radio
3 frequency energy subject to Part 15 of the Commission's
4 rules (47 CFR 15.1 et seq.).”.

5 **SEC. 153. ELIMINATION OF TERRESTRIAL LOOPHOLE.**

6 (a) IN GENERAL.—

7 (1) DEFINITION OF SATELLITE CABLE PRO-
8 GRAMMING.—Section 705(d)(1) of the Communica-
9 tions Act of 1934 (47 U.S.C. 605(d)(1)) is amended
10 by striking “which is transmitted via satellite and”.

11 (2) CONFORMING AMENDMENT.—Section
12 628(i)(3) of the Communications Act of 1934 (47
13 U.S.C. 548(h)(3)) is amended by striking “such pro-
14 gramming is retransmitted by satellite and”.

15 (b) CERTAIN MULTICHANNEL VIDEO PROGRAMMING
16 DISTRIBUTORS DISQUALIFIED FROM SECTION 628 REM-
17 EDIES.—Section 628(c)(3) of the Communications Act of
18 1934 (47 U.S.C. 548(c)(3)) is amended by adding at the
19 end thereof the following:

20 “(C) COMPLAINANT ELIGIBILITY.—

21 “(i) IN GENERAL.—Notwithstanding
22 any other provision of this Act, a multi-
23 channel video programming distributor ag-
24 grieved by conduct that it alleges con-
25 stitutes a violation of subsection (b) or

1 (c)(2)(C) with respect to national sports
2 programming may not commence an adju-
3 dicatory proceeding at the Commission or
4 avail itself of any other remedy under title
5 V or any other provision of this Act if the
6 aggrieved distributor provides any national
7 sports programming under an exclusive
8 contract to distribute that programming.

9 “(ii) NATIONAL SPORTS PROGRAM-
10 MING.—In this subparagraph, the term
11 ‘national sports programming’ means any
12 live broadcast event involving teams of the
13 National Football League, the National or
14 American Baseball League, the National
15 Hockey League, or the National Basketball
16 Association, the National Collegiate Ath-
17 letic Association, or any other equivalent
18 national sports organization identified by
19 the Commission by rule.”.

20 (c) REPEAL OF SECTION 628(e) SUNSET.—Section
21 628(e) of the Communications Act of 1934 (47 U.S.C.
22 548(e)) is amended by striking paragraph (5).

23 (d) PROCEDURE.—Section 628 of the Communica-
24 tions Act of 1934 (47 U.S.C. 548) is amended by striking
25 subsections (d), (e), and (f) and inserting the following:

1 “(d) ADJUDICATORY PROCEEDING.—

2 “(1) IN GENERAL.—Except as provided in sub-
3 section (c)(3)(C), a multichannel video programming
4 distributor aggrieved by conduct that it alleges con-
5 stitutes a violation of subsection (b) or (c)(2)(C), or
6 the regulations of the Commission under subsection
7 (c), may commence an adjudicatory proceeding at
8 the Commission.

9 “(2) REQUEST FOR PRODUCTION OF AGREE-
10 MENTS.—In any proceeding commenced under para-
11 graph (1), the Commission shall request from a
12 party, and the party shall produce, such agreements
13 between the party and a third party relating to the
14 distribution of multichannel video programming dis-
15 tributor programming that the Commission believes
16 to be relevant to its decision regarding the matters
17 at issue in such adjudicatory proceeding.

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

24 “(e) REMEDIES FOR VIOLATIONS.—

1 “(1) REMEDIES AUTHORIZED.—Upon comple-
2 tion of an adjudicatory proceeding under subsection
3 (d), the Commission shall have the power to order
4 appropriate remedies, including, if necessary, the
5 power to establish prices, terms, and conditions of
6 sale of programming to an aggrieved multichannel
7 video programming distributor.

8 “(2) ADDITIONAL REMEDIES.—The remedies
9 provided under paragraph (1) are in addition to any
10 remedy available to an multichannel video program-
11 ming distributor under title V or any other provision
12 of this Act.

13 “(f) PROCEDURES.—

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

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

18 “(A) provide for an expedited review of
19 any complaints made pursuant to this section,
20 including the issuance of a final order termi-
21 nating such review not later than 270 days
22 after the date on which the complaint was filed;

23 “(B) establish procedures for the Commis-
24 sion to collect such data as the Commission re-
25 quires to carry out this section, including the

1 right to obtain copies of all contracts and docu-
2 ments reflecting arrangements and under-
3 standings alleged to violate this section; and

4 “(C) provide for penalties to be assessed
5 against any person filing a frivolous complaint
6 pursuant to this section.”.

7 **SEC. 154. DBS SERVICES REQUIREMENTS.**

8 (a) IN GENERAL.—Section 335 of the Communica-
9 tions Act of 1934 (47 U.S.C. 335) is amended by adding
10 at the end the following:

11 “(c) NATIONWIDE SERVICE REQUIREMENTS FOR
12 DBS AND DIRECT-TO-HOME SATELLITE CARRIERS.—

13 “(1) IN GENERAL.—A satellite carrier that of-
14 fers multichannel audio or video programming serv-
15 ice or Internet access service directly to consumers
16 and that has more than 250,000 subscribers in the
17 United States shall make the service or services
18 available at comparable prices and terms in non-
19 contiguous states using any additional or replace-
20 ment satellites or transponders that are purchased,
21 leased, accessed, licensed, or otherwise used for the
22 service following the date of the enactment of the
23 Consumer Competition and Broadband Promotion
24 Act.

1 “(2) NATIONWIDE COVERAGE OF DBS AND DI-
2 RECT-TO-HOME SATELLITES.—The Commission may
3 not grant a license to the operator of any satellite
4 in the Fixed Satellite Service, the Direct Broadcast
5 Satellite service, the Mobile-Satellite Service, or the
6 Digital Audio Radio Service that is capable of pro-
7 viding multichannel audio or video programming dis-
8 tribution or Internet access services directly to con-
9 sumers in the United States unless the Commission
10 determines that, to the extent technically feasible,
11 the satellite is capable of providing services to con-
12 sumers in Alaska and Hawaii using signal power lev-
13 els that are within 10 percent of the peak power lev-
14 els that are available in the continental United
15 States.

16 “(3) SATELLITE CARRIER DEFINED.—In this
17 subsection, the term ‘satellite carrier’ means an enti-
18 ty that uses the facilities of a satellite in the Fixed-
19 Satellite Service, the Direct Broadcast Satellite serv-
20 ice, the Broadcast Satellite Service, the Mobile-Sat-
21 ellite Service, or the Digital Audio Radio Service
22 that is licensed by the Commission under part 25 of
23 title 47 of the Code of Federal Regulations, or is li-
24 censed or authorized by a foreign government.”.

1 (b) IMPLEMENTATION.—The Federal Communica-
2 tions Commission shall adopt such rules and policies as
3 are necessary to implement and enforce section 335(c) of
4 the Communications Act of 1934 (47 U.S.C. 335(c)).

5 **SEC. 155. INTERNET VIDEO.**

6 Section 616(a)(2) of the Communications Act of
7 1934 (47 U.S.C. 536(a)(2)) is amended by striking “dis-
8 tributors” and inserting “distributors, or against other
9 video programming distributors using any medium or plat-
10 form for such programming distribution including alter-
11 native mediums or platforms offered by the vendor,”.

12 **SEC. 156. TV ACT/VIDEO DESCRIPTION.**

13 (a) RULES REINSTATED.—The video description
14 rules of the Federal Communications Commission con-
15 tained in the report and order identified as Implementa-
16 tion of Video Description of Video Programming, Report
17 and Order, 15 F.C.C.R. 15,230 (2000), shall, notwith-
18 standing the decision of the United States Court of Ap-
19 peals for the District of Columbia Circuit in *Motion Pic-
20 ture Association of America, Inc., et al., v. Federal Commu-
21 nications Commission, et al.* (309 F. 3d 796, November
22 8, 2002), be considered to be authorized and ratified by
23 law.

24 (b) CONTINUING AUTHORITY OF COMMISSION.—The
25 Federal Communications Commission—

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

6 (2) may amend, repeal, or otherwise modify
7 such rules; and

8 (3) shall initiate a proceeding within 120 days
9 after the date of enactment of this Act, and com-
10 plete that proceeding within 1 year, to consider in-
11 corporating accessible information requirements in
12 its video description rules.

13 (c) ACCESSIBLE INFORMATION DEFINED.—In this
14 section, the term “accessible information” may include
15 written information displayed on television screens during
16 regular programming, hazardous warnings and other
17 emergency information, local and national news bulletins,
18 and any other information the Commission deems appro-
19 priate.

1 **TITLE II—PROMOTING VOICE**
2 **AND DATA COMPETITION**

3 **SEC. 201. INTERNET NONDISCRIMINATION/NETWORK NEU-**
4 **TRALITY REQUIREMENTS.**

5 (a) INTERNET NEUTRALITY.—Title I of the Commu-
6 nications Act of 1934 (47 U.S.C. 151 et seq.) is amended
7 by adding at the end the following:

8 **“SEC. 12. INTERNET NEUTRALITY.**

9 “(a) DUTY OF BROADBAND SERVICE PROVIDERS.—
10 With respect to any broadband service offered to the pub-
11 lic, each broadband service provider shall—

12 “(1) not block, interfere with, discriminate
13 against, impair, or degrade the ability of any person
14 to use a broadband service to access, use, send, post,
15 receive, or offer any lawful content, application, or
16 service made available via the Internet;

17 “(2) not prevent or obstruct a user from at-
18 taching or using any device to the network of such
19 broadband service provider, only if such device does
20 not physically damage or substantially degrade the
21 use of such network by other subscribers;

22 “(3) provide and make available to each user
23 information about such user’s access to the Internet,
24 and the speed, nature, and limitations of such user’s
25 broadband service;

1 “(4) enable any content, application, or service
2 made available via the Internet to be offered, pro-
3 vided, or posted on a basis that—

4 “(A) is reasonable and nondiscriminatory,
5 including with respect to quality of service, ac-
6 cess, speed, and bandwidth;

7 “(B) is at least equivalent to the access,
8 speed, quality of service, and bandwidth that
9 such broadband service provider offers to affili-
10 ated content, applications, or services; and

11 “(C) does not impose a charge on the basis
12 of the type of content, applications, or services
13 made available via the Internet into the network
14 of such broadband service provider;

15 “(5) only prioritize content, applications, or
16 services accessed by a user that is made available via
17 the Internet within the network of such broadband
18 service provider based on the type of content, appli-
19 cations, or services and the level of service purchased
20 by the user, without charge for such prioritization;
21 and

22 “(6) not install or utilize network features,
23 functions, or capabilities that impede or hinder com-
24 pliance with this section.

1 “(b) CERTAIN MANAGEMENT AND BUSINESS-RE-
2 LATED PRACTICES.—Nothing in this section shall be con-
3 strued to prohibit a broadband service provider from en-
4 gaging in any activity, provided that such activity is not
5 inconsistent with the requirements of subsection (a), in-
6 cluding—

7 “(1) protecting the security of a user’s com-
8 puter on the network of such broadband service pro-
9 vider, or managing such network in a manner that
10 does not distinguish based on the source or owner-
11 ship of content, application, or service;

12 “(2) offering directly to each user broadband
13 service that does not distinguish based on the source
14 or ownership of content, application, or service, at
15 different prices based on defined levels of bandwidth
16 or the actual quantity of data flow over a user’s con-
17 nection;

18 “(3) offering consumer protection services (in-
19 cluding parental controls for indecency or unwanted
20 content, software for the prevention of unsolicited
21 commercial electronic messages, or other similar ca-
22 pabilities), if each user is provided clear and accu-
23 rate advance notice of the ability of such user to
24 refuse or disable individually provided consumer pro-
25 tection capabilities;

1 “(4) handling breaches of the terms of service
2 offered by such broadband service provider by a sub-
3 scriber, provided that such terms of service are not
4 inconsistent with the requirements of subsection (a);
5 or

6 “(5) where otherwise required by law, to pre-
7 vent any violation of Federal or State law.

8 “(c) EXCEPTION.—Nothing in this section shall apply
9 to any service regulated under title VI, regardless of the
10 physical transmission facilities used to provide or transmit
11 such service.

12 “(d) IMPLEMENTATION.—Not later than 180 days
13 after the date of enactment of the Consumer Competition
14 and Broadband Promotion Act, the Commission shall pre-
15 scribe rules to implement this section that—

16 “(1) permit any aggrieved person to file a com-
17 plaint with the Commission concerning any violation
18 of this section; and

19 “(2) establish enforcement and expedited adju-
20 dicatory review procedures consistent with the objec-
21 tives of this section, including the resolution of any
22 complaint described in paragraph (1) not later than
23 90 days after such complaint was filed, except for
24 good cause shown.

25 “(e) ENFORCEMENT.—

1 “(1) IN GENERAL.—The Commission shall en-
2 force compliance with this section under title V, ex-
3 cept that—

4 “(A) no forfeiture liability shall be deter-
5 mined under section 503(b) against any person
6 unless such person receives the notice required
7 by section 503(b)(3) or section 503(b)(4); and

8 “(B) the provisions of section 503(b)(5)
9 shall not apply.

10 “(2) SPECIAL ORDERS.—In addition to any
11 other remedy provided under this Act, the Commis-
12 sion may issue any appropriate order, including an
13 order directing a broadband service provider—

14 “(A) to pay damages to a complaining
15 party for a violation of this section or the regu-
16 lations hereunder; or

17 “(B) to enforce the provisions of this sec-
18 tion.

19 “(f) DEFINITIONS.—In this section, the following
20 definitions shall apply:

21 “(1) AFFILIATED.—The term ‘affiliated’ in-
22 cludes—

23 “(A) a person that (directly or indirectly)
24 owns or controls, is owned or controlled by, or

1 is under common ownership or control with, an-
2 other person; or

3 “(B) a person that has a contract or other
4 arrangement with a content, applications, or
5 service provider relating to access to or dis-
6 tribution of such content, applications, or serv-
7 ice.

8 “(2) BROADBAND SERVICE.—The term
9 ‘broadband service’ has the meaning given it in sec-
10 tion 715(b)(1).

11 “(3) BROADBAND SERVICE PROVIDER.—The
12 term ‘broadband service provider’ has the meaning
13 given that term in section 715(b)(2).

14 “(4) IP-ENABLED VOICE SERVICE.—The term
15 ‘IP-enabled voice service’ has the meaning given that
16 term in section 715(b)(3).

17 “(5) USER.—The term ‘user’ means any resi-
18 dential or business subscriber who, by way of a
19 broadband service, takes and utilizes Internet serv-
20 ices, whether provided for a fee, in exchange for an
21 explicit benefit, or for free.”

22 (b) REPORT ON DELIVERY OF CONTENT, APPLICA-
23 TIONS, AND SERVICES.—Not later than 270 days after the
24 date of enactment of this Act, and annually thereafter,
25 the Federal Communications Commission shall transmit

1 a report to the Committee on Commerce, Science, and
2 Transportation of the Senate and the Committee on En-
3 ergy and Commerce of the House of Representatives on
4 the—

5 (1) ability of providers of content, applications,
6 or services to transmit and send such information
7 into and over broadband networks;

8 (2) ability of competing providers of trans-
9 mission capability to transmit and send such infor-
10 mation into and over broadband networks;

11 (3) price, terms, and conditions for transmit-
12 ting and sending such information into and over
13 broadband networks;

14 (4) number of entities that transmit and send
15 information into and over broadband networks; and

16 (5) state of competition among those entities
17 that transmit and send information into and over
18 broadband networks.

19 **SEC. 202. OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE**
20 **CARRIERS.**

21 (a) IN GENERAL.—For purposes of this section, an
22 incumbent local exchange carrier shall be treated as a
23 common carrier, telecommunications carrier, local ex-
24 change carrier, and incumbent local exchange carrier with

1 respect to all wireline facilities owned or controlled by such
2 carrier or any affiliate, regardless of the—

3 (1) classification of the services offered using
4 such facilities;

5 (2) transmission and switching technology used;
6 or

7 (3) physical composition of such wireline facili-
8 ties.

9 (b) COMPLIANCE WITH 1934 ACT.—A carrier de-
10 scribed in subsection (a), and any affiliate thereof, shall
11 comply with the requirements of sections 201, 202, 224,
12 251, 252, 259, and 271 of the Communications Act of
13 1934 (47 U.S.C. 201, 202, 224, 251, 252, 259, and 271)
14 with respect to any request by a telecommunications car-
15 rier for access to such wireline facilities, or for trans-
16 mission provided using such facilities, for the provision of
17 any telecommunications, telecommunications service, or
18 information service, regardless of the transmission or
19 switching technology used by such requesting tele-
20 communications carrier to provide such services.

21 (c) COMMON TERMINOLOGY.—The terms used in this
22 section shall have the same meaning as such terms are
23 given in sections 3 and 251(h) of the Communications Act
24 of 1934 (47 U.S.C. 153 and 251(h)).

1 **SEC. 203. STAND ALONE BROADBAND REQUIREMENT.**

2 Title VII of the Communications Act of 1934 (47
3 U.S.C. 601 et seq.) is amended by adding at the end there-
4 of the following:

5 **“SEC. 715. STAND-ALONE BROADBAND SERVICE.**

6 “(a) PROHIBITION.—A broadband service provider
7 shall not require a subscriber, as a condition on the pur-
8 chase of any broadband service the provider offers, to pur-
9 chase any cable service, telecommunications service, or IP-
10 enabled voice service offered by the provider.

11 “(b) DEFINITIONS.—In this section:

12 “(1) The term ‘broadband service’ means a 2-
13 way transmission service (whether offered separately
14 or as part of a bundle of services) offered directly
15 to the public, or to such classes of users as to be ef-
16 fectively available directly to the public, regardless of
17 the facilities used that connects to the Internet and
18 transmits information of a user’s choosing at a
19 speed, as shall be periodically updated by the Com-
20 mission, of at least 200 kilobits per second in at
21 least one direction.

22 “(2) The term ‘broadband service provider’
23 means a person or entity that controls, operates, or
24 resells and controls any facility used to provide
25 broadband service.

1 “(3) IP-ENABLED VOICE SERVICE.—The term
2 ‘IP-enabled voice service’ means the provision of
3 real-time 2-way voice communications offered to the
4 public, or such classes of users as to be effectively
5 available to the public, transmitted through cus-
6 tomer premises equipment using IP protocol, or a
7 successor protocol, (whether part of a bundle of
8 services or separately) with interconnection capa-
9 bility such that the service can originate traffic to,
10 and terminate traffic from, the public switched tele-
11 phone network.”.

12 **SEC. 204. BETTER DATA ON LOCAL COMPETITION IN DIF-**
13 **FERENT PRODUCT MARKETS.**

14 (a) INQUIRY.—Not later than 180 days after the date
15 of enactment of this Act, and every year thereafter, the
16 Commission shall conduct an inquiry regarding the extent
17 to which providers of telecommunications service,
18 broadband service, and IP-enabled voice service have de-
19 ployed their own local transmission facilities.

20 (b) DATA COLLECTION.—In connection with its in-
21 quiry, the Commission shall require that all providers of
22 telecommunications service, broadband service, and IP-en-
23 abled voice service submit annual reports to the Commis-
24 sion describing the extent to which they have deployed
25 their own local transmission facilities. At a minimum, pro-

1 viders shall report separately on their deployment of loop
2 facilities in each wire center used to provide service in dif-
3 ferent product markets served by providers of tele-
4 communications service, broadband service, and IP-en-
5 abled voice service. In defining product markets for these
6 purposes, the Commission shall utilize the methodology set
7 forth in the United States Department of Justice and
8 Federal Trade Commission Horizontal Merger Guidelines
9 and shall, at a minimum, distinguish among the products
10 demanded by—

- 11 (1) residential customers;
- 12 (2) small and medium-sized business customers;
- 13 and
- 14 (3) large business customers.

15 (c) REPORT TO CONGRESS.—Not later than one year
16 after the date of enactment of this Act, and each year
17 thereafter, the Commission shall submit a report to Con-
18 gress describing the extent to which providers of tele-
19 communications service, broadband service, and IP-en-
20 abled voice service have deployed their own local trans-
21 mission facilities. Such report shall analyze separately the
22 extent of actual facilities-based competition in each wire
23 center in the product markets described in subsection (b).

24 (d) DEFINITIONS.—In this section:

1 (1) BROADBAND SERVICE.—The term
2 “broadband service” has the meaning given that
3 term in section 715(b)(1) of the Communications
4 Act of 1934.

5 (2) IP-ENABLED VOICE SERVICE.—The term
6 “IP-enabled voice service” has the meaning given
7 that term in section 715(b)(3) of the Communica-
8 tions Act of 1934.

9 (3) LOCAL TRANSMISSION FACILITIES.—The
10 term “local transmission facilities” means wireless
11 and wireline transmission facilities used to transmit
12 information or signals to, from or among locations
13 within a wire center.

14 **SEC. 205. IMPROVED ENFORCEMENT OPTIONS.**

15 (a) INCREASED PENALTIES.—Section 503(b)(2)(B)
16 of the Communications Act of 1934 (47 U.S.C.
17 503(b)(2)(B)) is amended—

18 (1) by striking “\$100,000” and inserting
19 “\$1,000,000”; and

20 (2) by striking “\$1,000,000” and inserting
21 “\$10,000,000”.

22 (b) STATUTE OF LIMITATIONS.—Section 503(b)(6)
23 of the Communications Act of 1934 (47 U.S.C. 503(b)(6))
24 is amended—

1 (1) by striking “or” after the semicolon in sub-
2 paragraph (A)(ii);

3 (2) redesignating subparagraph (B) as subpara-
4 graph (C); and

5 (3) inserting after subparagraph (A) the fol-
6 lowing:

7 “(B) such person is a common carrier subject
8 to the provisions of this Act or an applicant for any
9 common carrier license, permit, certificate, or other
10 instrument of authorization issued by the Commis-
11 sion and if the violation charged occurred more than
12 3 years prior to the date of issuance of the required
13 notice or notice of apparent liability; or”.

14 **SEC. 206. COMPETITION IN SPECIAL ACCESS MARKETS.**

15 (a) **REPLACEMENT OF CURRENT RULES.**—Within
16 180 days after the date of enactment of this Act, the Com-
17 mission shall issue a final order, which shall take effect
18 not later than 30 days after the date on which it is issued,
19 requiring integrated incumbent local exchange carriers to
20 offer special access services pursuant to interstate tariffs
21 that—

22 (1) except as provided in section 207, are sub-
23 ject to the special access service price index estab-
24 lished under subsection (b)(1); and

1 (2) include service quality measurements and,
2 where applicable, service quality benchmarks for pre-
3 ordering, ordering, provisioning, maintenance, and
4 repair that apply uniformly to all integrated incum-
5 bent local exchange carriers and for which each inte-
6 grated incumbent local exchange carrier shall file
7 service quality reports.

8 (b) SPECIAL ACCESS SERVICE PRICE INDEX.—

9 (1) IN GENERAL.—In the proceeding conducted
10 under subsection (a), the Commission shall—

11 (A) develop a methodology for establishing
12 and revising an index that defines the max-
13 imum prices that may be charged for services
14 subject to the index while preserving incentives
15 to offer subject services more efficiently;

16 (B) establish a special access service price
17 index utilizing that methodology that—

18 (i) is based on the rates in effect on
19 June 30, 2004, for special access service
20 offered by an integrated incumbent local
21 exchange carrier; and

22 (ii) reduces those rates to the level
23 that would have been in effect if the Com-
24 mission had applied an annual productivity
25 adjustment for special access service, less

1 inflation, beginning on July 1, 2004, and
2 on each subsequent July 1 prior to the
3 date of enactment of this Act; and

4 (C) establish procedures under which, be-
5 ginning with the first annual access filing after
6 the order required by subsection (a) is issued
7 and annually thereafter, the Commission
8 shall—

9 (i) adjust the index by an annual pro-
10 ductivity adjustment to reflect productivity
11 gains achievable by integrated incumbent
12 local exchange companies in excess of the
13 economy as a whole; and

14 (ii) ensure that any reductions re-
15 quired by this section are provided propor-
16 tionately to all special access customers
17 and across all special access services.

18 (2) MULTIPLE INDICES.—The Commission may
19 establish more than 1 special access service price
20 index under this section.

21 **SEC. 207. CUSTOMER CONTRACTS.**

22 (a) IN GENERAL.—In the rulemaking proceeding
23 under section 206(a), the Commission shall adopt rules
24 that—

1 (1) allow integrated incumbent local exchange
2 carriers to continue to offer special access pursuant
3 to volume and term discounts; but

4 (2) prohibit integrated incumbent local ex-
5 change carriers from conditioning the availability of
6 volume and term discounts on customers' compliance
7 with requirements that do not relate to the reduction
8 of costs yielded by volume and term commitments.

9 (b) EXAMPLES OF CONDITIONS UNRELATED TO VOL-
10 UME AND TERM EFFICIENCIES.—For purposes of sub-
11 section (a)(2), among the conditions that may be prohib-
12 ited is any requirement that a customer—

13 (1) discontinue purchasing, and not purchase
14 during the term of the contract, services from the
15 integrated incumbent local exchange carriers' com-
16 petitors;

17 (2) increase the volume of special access pur-
18 chased from the integrated incumbent local exchange
19 carrier without a corresponding and proportionate
20 increase in the discount offered under the contract;
21 and

22 (3) separate the special access purchases of its
23 business units for purposes of achieving required vol-
24 umes.

1 (c) EXISTING CONTRACTS.—If a customer receiving
2 special access service from an integrated incumbent local
3 exchange carrier under a contract that is in effect on the
4 date of enactment of this Act that includes a condition
5 prohibited by the Commission’s rules adopted under sub-
6 section (a), the customer may terminate the contract, not-
7 withstanding any provision of the contract or any other
8 provision of Federal, State, or local law, without liability
9 to the carrier for premature termination or any penalty
10 provided by the contract or law in order to facilitate the
11 ability of customers to purchase special access service
12 under interstate tariffs that are subject to the special ac-
13 cess service requirements of section 206.

14 **SEC. 208. COMPETITIVE ALTERNATIVE PRICING.**

15 (a) LOW REVENUE SHARE EXCEPTION.—If an inte-
16 grated incumbent local exchange carrier demonstrates to
17 the satisfaction of the Commission that its share of total
18 annual special access revenues obtained by incumbent
19 local exchange carriers in a year is less than 15 percent,
20 the Commission may determine that the carrier is not sub-
21 ject to the requirement established under section 206(a)
22 for that year.

23 (b) REQUIRED ACCESS EXCEPTION.—Beginning with
24 the 6th year for which the requirement established under
25 section 206(a) is in effect, if an integrated incumbent local

1 exchange carrier demonstrates to the satisfaction of the
2 Commission that it is not required to provide access to
3 loops or transport as unbundled network elements in ac-
4 cordance with the standards adopted by the Commission
5 under section 251 of the Communications Act of 1934 (47
6 U.S.C. 251), the Commission may determine that the car-
7 rier is no longer subject to the requirements for special
8 access loops or transport that correspond in capacity to
9 the types of loop or transport for which unbundling is no
10 longer required, but only in locations for which such
11 unbundling is no longer required.

12 (c) ALTERNATIVE PRICING REGIME.—If an inte-
13 grated incumbent local exchange carrier is determined by
14 the Commission under subsection (a) or (b) not to be sub-
15 ject to the requirement established under section 206(a),
16 its provision of loop or transport special access service in
17 the deregulated area shall be subject to a separate price
18 index that contains an annual adjustment equal to the rate
19 of inflation used by the Commission for purposes of sec-
20 tion 206(b)(1)(A).

21 **SEC. 209. FORBEARANCE.**

22 Notwithstanding section 10 of the Communications
23 Act of 1934 (47 U.S.C. 160)—

24 (1) the Commission may not forbear from ap-
25 plying the requirements of this title or any regula-

1 tion promulgated under this title until 5 years after
2 the effective date of the Commission’s rules issued
3 pursuant to section 206(a) of this Act; and

4 (2) no forbearance granted by the Commission
5 under that section before the date of enactment of
6 this Act shall apply to any requirement of this title
7 or any regulation promulgated under this title.

8 **SEC. 210. DEFINITIONS.**

9 In this title:

10 (1) ANNUAL PRODUCTIVITY ADJUSTMENT.—

11 The term “annual productivity adjustment” means a
12 percentage determined by the Commission to rep-
13 resent the productivity gained by integrated incum-
14 bent local exchange companies in excess of the econ-
15 omy as a whole.

16 (2) COMMISSION.—The term “Commission”
17 means the Federal Communications Commission.

18 (3) INTEGRATED INCUMBENT LOCAL EX-
19 CHANGE CARRIER.—The term “integrated incum-
20 bent local exchange carrier” means any local ex-
21 change carrier, including its affiliates and subsidi-
22 aries (without regard to the date on which an entity
23 became or becomes an affiliate or subsidiary), that
24 itself, or with its affiliates and subsidiaries—

1 (A) provides wireline local and local ex-
2 change and commercial mobile radio services
3 over its own facilities, or the facilities of its af-
4 filiates or subsidiaries; and

5 (B) has 15 percent or more of total annual
6 special access revenues obtained by incumbent
7 local exchange carriers in the year immediately
8 preceding the date of enactment of this Act, as
9 reported to the Commission.

10 (4) SERVICE QUALITY BENCHMARK.—The term
11 “service quality benchmark” means a reasonable
12 level of service quality for an integrated incumbent
13 local exchange carrier’s performance for a particular
14 special access pre-ordering, ordering, provisioning,
15 maintenance, or repair function for which there is no
16 retail analog when providing such a function to its
17 wholesale customers and its affiliates.

18 (4) SERVICE QUALITY MEASUREMENT.—The
19 term “service quality measurement” means a uni-
20 form definition of a particular wholesale special ac-
21 cess pre-ordering, ordering, provisioning, mainte-
22 nance, or repair function that allows for consistent
23 measurement and comparison of service quality pro-
24 vided by an incumbent local exchange carrier to

1 itself, its affiliates, its retail customers, and its
2 wholesale customers.

3 (5) SERVICE QUALITY REPORT.—The term
4 “service quality report” means a quarterly report by
5 an integrated incumbent local exchange carrier set-
6 ting forth its performance in providing the functions
7 defined by the service quality measurements where
8 each integrated incumbent local exchange carrier re-
9 ports separately its performance in providing the
10 functions to itself, its affiliates, its retail customers,
11 and its wholesale customers (including any wholesale
12 customer that requests company-specific reporting).

13 (6) SPECIAL ACCESS.—The term “special ac-
14 cess” means an interstate service offered by an in-
15 cumbent local exchange carrier that—

16 (A) provides a dedicated (unswitched)
17 transmission link between 2 locations regardless
18 of the technology used; and

19 (B) may consist of a dedicated connection
20 between or among—

- 21 (i) a local exchange carrier’s offices;
22 (ii) an interexchange carrier’s points
23 of presence;
24 (iii) a wireless carrier’s cell sites or
25 switching centers; or

1 (iv) connections between any location
2 in clause (i), (ii), or (iii) and a customer's
3 premises, including Internet content server
4 locations.

5 (7) YEAR.—The term “year” means a calendar
6 year or any other consecutive 12-month period.

7 **TITLE III—ENCOURAGING**
8 **BROADBAND DEPLOYMENT**
9 **AND BASIC COMMUNICA-**
10 **TIONS RESEARCH**

11 **SEC. 301. ELIGIBLE BROADCAST TELEVISION SPECTRUM**
12 **MADE AVAILABLE FOR WIRELESS USE.**

13 Part I of title III of the Communications Act of 1934
14 (47 U.S.C. 301 et seq.), as amended by section 152, is
15 amended by adding at the end the following:

16 **“SEC. 343. ELIGIBLE BROADCAST TELEVISION SPECTRUM**
17 **MADE AVAILABLE FOR WIRELESS USE.**

18 “(a) IN GENERAL.—Effective 270 days after the date
19 of enactment of the Consumer Competition and
20 Broadband Promotion Act, a certified unlicensed device
21 may use eligible broadcast television frequencies.

22 “(b) COMMISSION TO FACILITATE USE.—Within 270
23 days after the date of enactment of that Act, the Commis-
24 sion shall adopt minimal technical and device rules in ET
25 Docket No. 04–186 to facilitate the efficient use of eligible

1 broadcast television frequencies by certified unlicensed de-
2 vices, which shall include rules and procedures—

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

5 “(2) to require certification of unlicensed de-
6 vices designed to be operated in the eligible broad-
7 cast television frequencies which shall include testing
8 in a laboratory certified by the Commission to en-
9 sure that such devices meet the technical criteria es-
10 tablished under this paragraph;

11 “(3) to address complaints from licensees with-
12 in the eligible broadcast television frequencies that a
13 certified unlicensed device causes harmful inter-
14 ference, which shall include verification in the field
15 of actual harmful interference; and

16 “(4) to limit the operation or use of certified
17 unlicensed devices within any geographic area in
18 which a public safety entity is authorized to operate
19 as a licensee within the eligible broadcast television
20 frequencies.

21 “(c) DEFINITIONS.—In this section:

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

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

4 “(A) All frequencies between 54 and 72
5 megaHertz, inclusive.

6 “(B) All frequencies between 76 and 88
7 megaHertz, inclusive.

8 “(C) All frequencies between 174 and 216
9 megaHertz, inclusive.

10 “(D) All frequencies between 470 and 608
11 megaHertz, inclusive.

12 “(E) All frequencies between 616 and 698
13 megaHertz, inclusive.”.

14 **SEC. 302. MUNICIPAL BROADBAND.**

15 Section 706 of the Telecommunications Act of 1996
16 (47 U.S.C. 157 note) is amended—

17 (1) by redesignating subsection (c) as sub-
18 section (d) and inserting after subsection (b) the fol-
19 lowing:

20 “(c) LOCAL GOVERNMENT PROVISION OF ADVANCED
21 TELECOMMUNICATIONS CAPABILITY AND SERVICES.—

22 “(1) IN GENERAL.—No State statute, regula-
23 tion, or other State legal requirement may prohibit
24 or have the effect of prohibiting any public provider
25 from providing, to any person or any public or pri-

1 vate entity, advanced telecommunications capability
2 or any service that utilizes the advanced tele-
3 communications capability provided by such pro-
4 vider.

5 “(2) ANTIDISCRIMINATION SAFEGUARDS.—To
6 the extent any public provider regulates competing
7 private providers of advanced telecommunications
8 capability or services, it shall apply its ordinances
9 and rules without discrimination in favor of itself or
10 any advanced telecommunications services provider
11 that it owns.

12 “(3) SAVINGS CLAUSE.—Nothing in this sub-
13 section shall exempt a public provider from any Fed-
14 eral or State telecommunications law or regulation
15 that applies to all providers of advanced tele-
16 communications capability or services using such ad-
17 vanced telecommunications capability.”; and

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

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

1 450b(e)), that provides advanced telecommunications
2 capability, or any service that utilizes such advanced
3 telecommunications capability, to any person or pub-
4 lic or private entity.”.

5 **SEC. 303. FEDERAL INFORMATION AND COMMUNICATIONS**
6 **TECHNOLOGY RESEARCH.**

7 (a) ADVANCED INFORMATION AND COMMUNICATIONS
8 TECHNOLOGY RESEARCH.—

9 (1) NATIONAL SCIENCE FOUNDATION INFORMA-
10 TION AND COMMUNICATIONS TECHNOLOGY RE-
11 SEARCH.—The Director of the National Science
12 Foundation shall establish a program of basic re-
13 search in advanced information and communications
14 technologies focused on enhancing or facilitating the
15 availability and affordability of advanced commu-
16 nications services to all Americans. In developing
17 and carrying out the program, the Director shall
18 consult with the Board established under paragraph
19 (2).

20 (2) FEDERAL ADVANCED INFORMATION AND
21 COMMUNICATIONS TECHNOLOGY RESEARCH
22 BOARD.—There is established within the National
23 Science Foundation a Federal Advanced Information
24 and Communications Technology Board which shall
25 advise the Director of the National Science Founda-

1 tion in carrying out the program authorized by para-
2 graph (1). The Board Shall be composed of individ-
3 uals with expertise in information and communica-
4 tions technologies, including representatives from the
5 National Telecommunications and Information Ad-
6 ministration, the Federal Communications Commis-
7 sion, the National Institute of Standards and Tech-
8 nology, and the Department of Defense.

9 (3) GRANT PROGRAM.—The Director, in con-
10 sultation with the Board, shall award grants for
11 basic research into advanced information and com-
12 munications technologies that will contribute to en-
13 hancing or facilitating the availability and afford-
14 ability of advanced communications services to all
15 Americans. Areas of research to be supported
16 through these grants include—

17 (A) affordable broadband access, including
18 wireless technologies;

19 (B) network security and reliability;

20 (C) communications interoperability;

21 (D) networking protocols and architec-
22 tures, including resilience to outages or attacks;

23 (E) trusted software;

24 (F) privacy;

1 (G) nanoelectronics for communications
2 applications;

3 (H) low-power communications electronics;
4 and

5 (I) such other related areas as the Direc-
6 tor, in consultation with the Board, finds ap-
7 propriate.

8 (4) CENTERS.—The Director shall award
9 multiyear grants, subject to the availability of appro-
10 priations, to institutions of higher education (as de-
11 fined in section 101(a) of the Higher Education Act
12 of 1965 (20 U.S.C. 1001(a)), nonprofit research in-
13 stitutions, or consortia thereof to establish multi-
14 disciplinary Centers for Communications Research.
15 The purpose of the Centers shall be to generate in-
16 novative approaches to problems in communications
17 and information technology research, including the
18 research areas described in paragraph (3). Institu-
19 tions of higher education nonprofit research, institu-
20 tions, or consortia receiving such grants may partner
21 with 1 or more government laboratories or for-profit
22 institutions, or other institutions of higher education
23 or nonprofit research institutions.

24 (5) APPLICATIONS.—The Director, in consulta-
25 tion with the Board, shall establish criteria for the

1 award of grants under paragraphs (3) and (4).
2 Grants shall be awarded under the program on a
3 merit-reviewed competitive basis. The Director shall
4 give priority to grants that offer the potential for
5 revolutionary rather than evolutionary break-
6 throughs.

7 (6) AUTHORIZATION OF APPROPRIATIONS.—
8 There are authorized to be appropriated to the Na-
9 tional Science Foundation to carry out this sub-
10 section—

- 11 (A) \$40,000,000 for fiscal year 2007;
12 (B) \$45,000,000 for fiscal year 2008;
13 (C) \$50,000,000 for fiscal year 2009;
14 (D) \$55,000,000 for fiscal year 2010; and
15 (E) \$60,000,000 for fiscal year 2011.

16 (b) SPECTRUM-SHARING INNOVATION TESTBED.—

17 (1) SPECTRUM-SHARING PLAN.—Within 1 year
18 after the date of enactment of this Act, the Federal
19 Communications Commission and the Assistant Sec-
20 retary of Commerce for Communications and Infor-
21 mation, in coordination with other Federal agencies,
22 shall—

- 23 (A) develop a plan to increase sharing of
24 spectrum between Federal and non-Federal gov-
25 ernment users; and

1 (B) establish a pilot program for imple-
2 mentation of the plan.

3 (2) TECHNICAL SPECIFICATIONS.—The Com-
4 mission and the Assistant Secretary—

5 (A) shall each identify a segment of spec-
6 trum of equal bandwidth within their respective
7 jurisdiction for the pilot program that is ap-
8 proximately 10 megaHertz in width for assign-
9 ment on a shared basis to Federal and non-
10 Federal government use; and

11 (B) may take the spectrum for the pilot
12 program from bands currently allocated on ei-
13 ther an exclusive or shared basis.

14 (3) REPORT.—The Commission and the Assist-
15 ant Secretary shall transmit a report to the Senate
16 Committee on Commerce, Science, and Transpor-
17 tation and the House of Representatives Committee
18 on Energy and Commerce 2 years after the incep-
19 tion of the pilot program describing the results of
20 the program and suggesting appropriate procedures
21 for expanding the program as appropriate.

22 (c) NATIONAL INSTITUTE OF STANDARDS AND
23 TECHNOLOGY RESPONSIBILITIES.—The Director of the
24 National Institute of Standards and Technology shall con-
25 tinue to support research and support standards develop-

1 ment in advanced information and communications tech-
2 nologies focused on enhancing or facilitating the avail-
3 ability and affordability of advanced communications serv-
4 ices to all Americans, in order to implement the Institute's
5 responsibilities under section 2(c)(12) of the National In-
6 stitute of Standards and Technology Act (15 U.S.C.
7 272(c)(12)). The Director shall support intramural re-
8 search and cooperative research with institutions of higher
9 education (as defined in section 101(a) of the Higher Edu-
10 cation Act of 1965 (20 U.S.C. 1001(a)) and industry.

11 **SEC. 304. COMMUNITY BROADBAND GRANTS FOR**
12 **UNSERVED AREAS AND UNDERSERVED COM-**
13 **MUNITIES.**

14 (a) IN GENERAL.—The Secretary of Commerce shall
15 establish a grant program to extend and expand the avail-
16 ability, affordability, and use of broadband service in
17 unserved areas and underserved communities.

18 (b) IMPLEMENTATION.—

19 (1) IN GENERAL.—The Secretary shall by rule
20 establish—

21 (A) guidelines for determining which areas
22 may be considered to be unserved areas and
23 which communities or groups may be considered
24 to be underserved communities for purposes of
25 this section;

1 (B) criteria for determining which facili-
2 ties-based providers of broadband communica-
3 tions service, and which projects, are eligible for
4 support from the account;

5 (C) procedural guidelines for awarding as-
6 sistance from the account on a merit-based and
7 competitive basis;

8 (D) guidelines for application procedures,
9 accounting and reporting requirements, and
10 other appropriate fiscal controls for assistance
11 made available from the account; and

12 (E) a procedure for making funds in the
13 account available among the several States on
14 a matching basis.

15 (2) STUDY AND ANNUAL REPORTS ON
16 UNSERVED AREAS AND UNDERSERVED COMMU-
17 NITIES.—

18 (A) UNSERVED AREAS.—Within 6 months
19 after the date of enactment of this Act, the Sec-
20 retary shall conduct a study to determine which
21 areas of the United States may be considered to
22 be unserved areas for purposes of this section.
23 For purposes of the study and for purposes of
24 the guidelines to be established under sub-
25 section (a)(1), the availability of broadband

1 communications services by satellite in an area
2 shall not preclude designation of that area as
3 unserved if the Secretary determines that
4 subscribership to the service in that area is de
5 minimis.

6 (B) UNDERSERVED COMMUNITIES.—With-
7 in 6 months after the date of enactment of this
8 Act, the Secretary shall conduct a study to de-
9 termine which communities or groups of the
10 United States may be considered to be under-
11 served communities for purposes of this section.
12 In establishing guidelines for determining which
13 communities or groups may be considered to be
14 underserved communities or groups for pur-
15 poses of this section, the Secretary shall, at a
16 minimum, include communities or groups in
17 which broadband penetration is at least 50 per-
18 cent below the national average.

19 (C) ANNUAL UPDATES.—The Secretary
20 shall update the study annually.

21 (D) REPORT.—The Secretary shall trans-
22 mit a report to the Senate Committee on Com-
23 merce, Science, and Transportation and the
24 House of Representatives Committee on Energy
25 and Commerce setting forth the findings and

1 conclusions of the Secretary for the study and
2 each update under this paragraph and making
3 recommendations for an increase or decrease, if
4 necessary, in the amounts credited to the ac-
5 count under this section.

6 (c) ADMINISTRATIVE PROVISIONS.—

7 (1) IN GENERAL.—Upon approving an applica-
8 tion under this section with respect to any project,
9 the Secretary shall make a grant to or enter into a
10 contract with the applicant in an amount determined
11 by the Secretary not to exceed the reasonable and
12 necessary cost of such project or grant. The Sec-
13 retary shall pay such amount from the sums avail-
14 able therefor, in advance or by way of reimburse-
15 ment, and in such installments consistent with es-
16 tablished practice, as he may determine.

17 (2) MAXIMUM FUNDING PERIOD.—The funding
18 of any project or grant under this section shall con-
19 tinue for not more than 3 years from the date of the
20 original grant or contract.

21 (3) ANNUAL SUMMARY AND EVALUATION RE-
22 QUIRED.—The Secretary shall require that the re-
23 cipient of a grant or contract under this section sub-
24 mit a summary and evaluation of the results of the

1 project at least annually for each year in which
2 funds are received under this section.

3 (4) BOOKS AND RECORDS.—Each recipient of
4 assistance under this section shall keep such records
5 as may be reasonably necessary to enable the Sec-
6 retary to carry out the Secretary's functions under
7 this section, including records which fully disclose
8 the amount and the disposition by such recipient of
9 the proceeds of such assistance, the total cost of the
10 project or undertaking in connection with which
11 such assistance is given or used, the amount and na-
12 ture of that portion of the cost of the project or un-
13 dertaking supplied by other sources, and such other
14 records as will facilitate an effective audit.

15 (5) AUDIT AND EXAMINATION.—The Secretary
16 and the Comptroller General of the United States,
17 or any of their duly authorized representatives, shall
18 have access for the purposes of audit and examina-
19 tion to any books, documents, papers, and records of
20 the recipient that are pertinent to assistance re-
21 ceived under this section.

22 (d) REGULATIONS.—The Secretary is authorized to
23 make such rules and regulations as may be necessary to
24 carry out this section, including regulations relating to the
25 order of priority in approving applications for projects

1 under this section or to determining the amounts of grants
2 for such projects.

3 (g) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated \$500,000,000 for each
5 of the fiscal years 2008, 2009, and 2010, to be used by
6 the Secretary to carry out the provisions of this section.
7 Sums appropriated under this subsection for any fiscal
8 year shall remain available for payment of grants or con-
9 tracts for projects for which applications approved under
10 this section have been submitted within one year after the
11 last day of such fiscal year.

12 **SEC. 305. DIRECT FCC TO REVISIT BROADBAND SPEEDS.**

13 Within 90 days after the date of enactment of this
14 Act and biennially thereafter, the Federal Communica-
15 tions Commission shall revise its definition of broadband
16 to reflect a data rate—

17 (1) greater than the 200 kilobits per second
18 standard established in its Section 706 Report (14
19 FCC Rec. 2406); and

20 (2) consistent with data rates for broadband
21 communications services generally available to the
22 public on the date of enactment of this Act and
23 thereafter, upon the date of the Commission's re-
24 view.

1 **SEC. 306. DIRECT CENSUS TO INCLUDE QUESTION AS PART**
2 **OF ITS AMERICAM COMMUNITY SURVEY.**

3 The Secretary of Commerce, in consultation with the
4 Federal Communications Commission, shall expand the
5 American Community Survey conducted by the Bureau of
6 the Census to elicit information for residential households,
7 including those located on native lands, as to what tech-
8 nology such households use to access the Internet from
9 home.

10 **TITLE IV—REFORM AND**
11 **STRENGTHEN USE**

12 **SEC. 401. UNIVERSAL SERVICE FUND CONTRIBUTION RE-**
13 **QUIREMENTS.**

14 (a) INCLUSION OF INTRASTATE REVENUES.—Section
15 254(d) of the Communications Act of 1934 (47 U.S.C.
16 254(d)) is amended—

17 (1) by striking “Every” and inserting “Not-
18 withstanding section 2(b) of this Act, a”;

19 (2) by striking “interstate” each place it ap-
20 pears; and

21 (b) STATE USF CONTRIBUTIONS.—Section 254(f) of
22 the Communications Act of 1934 (47 U.S.F. 254(f)) is
23 amended—

24 (1) by striking “telecommunications carrier that
25 provides intrastate telecommunications” and insert-

1 ing “provider of telecommunications or telecommuni-
2 cations services”;

3 (2) by striking “that do not rely on or burden
4 Federal universal support mechanisms”; and

5 (3) by adding at the end “Nothing in this sub-
6 section precludes a State from requiring contribu-
7 tions with respect to telecommunications or tele-
8 communications services for which contributions are
9 required under subsection (d) if the primary place of
10 use of such services are within the State, regardless
11 of where the services originate or terminate or
12 through which the services transit.”.

13 (c) UNIVERSAL SERVICE PROCEEDING.—

14 (1) PROCEEDING.—The Federal Communica-
15 tions Commission shall initiate a proceeding, or take
16 action pursuant to any proceeding on universal serv-
17 ice existing on the date of enactment of this Act, to
18 establish a permanent mechanism to support uni-
19 versal service, that will preserve and enhance the
20 long term financial stability of universal service, and
21 will promote the public interest.

22 (2) CRITERIA.—In establishing such a perma-
23 nent mechanism, the Commission—

24 (A) shall exercise its authority under the
25 last sentence of section 254(d) of the Commu-

1 communications Act of 1934 as necessary to ensure
2 contributions by providers of broadband services
3 as defined in section 715(b)(1) of the Commu-
4 nications Act of 1934 and of IP-enabled voice
5 services as defined in section 715(b)(3) of the
6 Communications Act of 1934; and

7 (B) may include collection methodologies
8 such as total telecommunications revenues, the
9 assignment of telephone numbers and any suc-
10 cessor identifier, connections (which could in-
11 clude carriers with a retail connection to a cus-
12 tomer), and any combination thereof if the
13 methodology—

14 (i) promotes competitive neutrality
15 among providers and technologies;

16 (ii) ensures that such methodology re-
17 sults in a proportionately reduced burden
18 for low-volume residential customers and
19 customers of in-vehicle emergency commu-
20 nications services; and

21 (iii) ensures that a carrier is not re-
22 quired to contribute more than once for
23 the same transaction, activity, or service.

24 (3) DEADLINE.—The Commission shall com-
25 plete the proceeding and issue a final rule not more

1 than 6 months after the date of enactment of this
2 Act.

3 (d) COMPETITIVE NEUTRALITY PRINCIPLE.—Section
4 254(b) of the Communications Act of 1934 (47 U.S.C.
5 254(b)) is amended by redesignating paragraph (7) as
6 paragraph (8), and inserting the following:

7 “(7) COMPETITIVE NEUTRALITY.—Universal
8 service support mechanisms and rules should be
9 competitively neutral. In this context, competitive
10 neutrality means that universal service support
11 mechanisms and rules neither unfairly advantage
12 nor disadvantage one provider over another, and nei-
13 ther unfairly favor nor disfavor one technology over
14 another.”.

15 **SEC. 402. TREATMENT OF SUBSTITUTE SERVICES UNDER**
16 **SECTION 254(g).**

17 (a) IN GENERAL.—Section 254(g) of the Commu-
18 nications Act of 1934 (47 U.S.C. 254(g)) is amended by
19 inserting “This section shall also apply to any services
20 within the jurisdiction of the Commission that can be used
21 as effective substitutes for interexchange telecommuni-
22 cations services, including any such substitute classified
23 as an information service that uses telecommunications.”
24 after “State.”.

1 **SEC. 403. PHANTOM TRAFFIC.**

2 Section 254 of the Communications Act of 1934 (47
3 U.S.C. 254) is amended by adding at the end the fol-
4 lowing:

5 “(m) NETWORK TRAFFIC IDENTIFICATION AC-
6 COUNTABILITY STANDARDS.—

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

18 “(2) NETWORK TRAFFIC IDENTIFICATION
19 RULEMAKING.—The Commission, in consultation
20 with the States, shall initiate a single rulemaking no
21 later than 180 days after the date of enactment of
22 the Consumer Competition and Broadband Pro-
23 motion Act to establish rules and enforcement provi-
24 sions for traffic identification.

25 “(3) NETWORK TRAFFIC IDENTIFICATION EN-
26 FORCEMENT.—The Commission shall adopt clear

1 penalties, fines, and sanctions for insufficiently la-
2 beled traffic.”.

3 **SEC. 404. PERMANENT EXTENSION OF ADA EXEMPTION.**

4 Section 254 of the Communications Act of 1934 (47
5 U.S.C. 254), as amended by section 403, is further
6 amended by adding at the end the following:

7 “(n) APPLICATION OF ANTIDEFICIENCY ACT.—Sec-
8 tion 1341 and subchapter II of chapter 15 of title 31,
9 United States Code, do not apply—

10 “(1) to any amount collected or received as
11 Federal universal service contributions required by
12 this section, including any interest earned on such
13 contributions; nor

14 “(2) to the expenditure or obligation of
15 amounts attributable to such contributions for uni-
16 versal service support programs established pursuant
17 to this section.”.

18 **SEC. 405. INTERCARRIER COMPENSATION.**

19 (a) JURISDICTION.—Notwithstanding section 2(b) of
20 the Communications Act of 1934 (47 U.S.C. 152(b)), the
21 Federal Communications Commission shall have exclusive
22 jurisdiction to establish rates for inter-carrier compensa-
23 tion payments and shall establish rules providing a com-
24 prehensive, unified system of inter-carrier compensation,

1 including compensation for the origination and termi-
2 nation of intrastate telecommunications traffic.

3 (b) CRITERIA.—In establishing these rules, and in
4 conjunction with its action in its universal service pro-
5 ceeding under section 401(c), the Commission, in con-
6 sultation with the Federal-State Joint Board on Universal
7 Service, shall—

8 (1) ensure that the costs associated with the
9 provision of interstate and intrastate telecommuni-
10 cations services are fully recoverable;

11 (2) examine whether sufficient requirements
12 exist to ensure traffic contains necessary identifiers
13 for the purposes of inter-carrier compensation;

14 (3) to the greatest extent possible, minimize op-
15 portunities for arbitrage; and

16 (4) to the greatest extent possible, minimize
17 any resulting increase in subscriber line charges.

18 (c) SUFFICIENT SUPPORT.—The Commission should,
19 to the greatest extent possible, ensure that as a result of
20 its universal service and inter-carrier compensation pro-
21 ceedings, the aggregate amount of universal service sup-
22 port and inter-carrier compensation provided to local ex-
23 change carriers with fewer than 2 percent of the Nation's
24 subscriber lines will be sufficient to meet the just and rea-
25 sonable costs of such local exchange carriers.

1 (d) NEGOTIATED AGREEMENTS.—Nothing in this
2 section precludes carriers from negotiating their own
3 inter-carrier compensation agreements.

4 (e) DEADLINE.—The Commission shall complete the
5 pending Intercarrier Compensation proceeding in Docket
6 No. 01–92 and issue a final rule not more than 6 months
7 after the date of enactment of this Act.

8 **SEC. 406. PRIMARY LINE; CONDITIONS FOR DESIGNATION**
9 **AS AN ELIGIBLE TELECOMMUNICATIONS**
10 **CARRIER; BROADBAND REQUIREMENT.**

11 (a) PRIMARY LINE.—Section 214(e) of the Commu-
12 nications Act of 1934 (47 U.S.C. 214(e)) is amended by
13 adding at the end the following:

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

22 (b) DESIGNATION.—Section 214(e) of the Commu-
23 nications Act of 1934 (47 U.S.C. 214(e)), as amended by
24 subsection (a), is further amended by adding at the end
25 the following:

1 “(8) CONDITIONS FOR DESIGNATION.—

2 “(A) IN GENERAL.—A common carrier
3 may not be designated as an eligible tele-
4 communications carrier under this subsection
5 unless the State commission or the Commission,
6 as applicable, determines that the carrier—

7 “(i) is committed to providing service
8 throughout its proposed designated service
9 area, using its own facilities or a combina-
10 tion of facilities and resale of another car-
11 rier’s facilities, to all customers making a
12 reasonable request for service;

13 “(ii) has certified to the State com-
14 mission or the Commission that it will pro-
15 vide service on a timely basis to requesting
16 customers within its service area, if service
17 can be provided at reasonable cost;

18 “(iii) has submitted a plan to the
19 State commission or the Commission that
20 describes with specificity proposed im-
21 provements or upgrades to its network that
22 will be accomplished with high-cost support
23 over the first 2 years following its designa-
24 tion as an eligible telecommunications car-
25 rier;

1 “(iv) has demonstrated to the State
2 commission or the Commission its ability
3 to remain functional in emergency situa-
4 tions, including a demonstration that it
5 has a reasonable amount of back-up power
6 to ensure functionality without an external
7 power source, is able to reroute traffic
8 around damaged facilities, and is capable
9 of managing traffic spikes resulting from
10 emergency situations;

11 “(v) is committed to following applica-
12 ble consumer protection and service quality
13 standards; and

14 “(vi) has complied with annual report-
15 ing requirements established by the Com-
16 mission or by State Commissions for all
17 carriers receiving universal service support
18 to ensure that such support is used for the
19 provision, maintenance, and upgrading of
20 the facilities for which support is intended.

21 “(9) BROADBAND SERVICE REQUIREMENT.—

22 “(A) IN GENERAL.—Notwithstanding para-
23 graph (1), an eligible telecommunications car-
24 rier may not receive universal service support
25 under section 254 more than 60 months after

1 the date of enactment of the Consumer Com-
2 petition and Broadband Promotion Act if it has
3 not deployed broadband service (as defined in
4 section 715(b)(1)) within its service area before
5 the end of that 60-month period unless it re-
6 ceives a waiver under subparagraph (B).

7 “(B) WAIVERS.—

8 “(i) APPLICATION.—In order to re-
9 ceive a waiver under this subparagraph, an
10 eligible telecommunications carrier shall
11 submit an application to the Commission.

12 “(ii) COST OF DEPLOYMENT.—If an
13 eligible telecommunications carrier dem-
14 onstrates to the satisfaction of the Com-
15 mission that the cost per line of deploying
16 such broadband service is at least 3 times
17 the average cost per line of deploying such
18 broadband service for all eligible tele-
19 communications carriers receiving uni-
20 versal service support, the Commission
21 shall waive the application of subparagraph
22 (A) to that eligible telecommunications car-
23 rier.

24 “(iii) OTHER FACTORS.—If an eligible
25 telecommunications carrier demonstrates

1 to the satisfaction of the Commission that
2 the deployment and provision of such
3 broadband service is not technically fea-
4 sible or would materially impair the car-
5 rier's ability to continue to provide services
6 supported under section 254(c) or
7 broadband service throughout its service
8 area, the Commission may waive the appli-
9 cation of subparagraph (A) to that eligible
10 telecommunications carrier.

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

23 “(v) TERM; RENEWAL.—A waiver
24 under this subparagraph—

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

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

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

15 **SEC. 407. RURAL HEALTH CARE SUPPORT MECHANISMS.**

16 (a) RURAL HEALTH CARE SUPPORT MECHANISMS.—

17 (1) AMENDMENT.—Subparagraph (A) of sec-
18 tion 254(h)(1) of the Communications Act of 1934
19 (47 U.S.C. 254(h)(1)) is amended to read as follows:

20 “(A) HEALTH CARE SERVICES FOR RURAL
21 AREAS.—Within 180 days after the date of en-
22 actment of the Consumer Competition and
23 Broadband Promotion Act, the Commission
24 shall prescribe regulations that provide that a
25 communications service provider shall, upon, re-

1 ceiving a bona fide request, provide covered
2 services which are necessary for the provision of
3 health care services in a State, including in-
4 struction relating to such services, to any public
5 or nonprofit health care provider that serves
6 persons who reside in rural areas in that State
7 at rates that are reasonably comparable to rates
8 charged for similar services in urban areas in
9 that State. A communications service provider
10 providing service under this subparagraph shall
11 be entitled to have an amount equal to the dif-
12 ference, if any, between the rates for services
13 provided to health care providers for rural areas
14 in a State and the rates for similar services in
15 urban areas in that State treated as a service
16 obligation as a part of its obligation to partici-
17 pate in the mechanisms to preserve and ad-
18 vance universal service.”.

19 (2) DEFINITION OF HEALTH CARE PRO-
20 VIDER.—Subparagraph (B) of section 254(h)(7) of
21 such Act (47 U.S.C. 254(h)(7)(B)) is amended to
22 read as follows:

23 “(B) HEALTH CARE PROVIDER.—The term
24 ‘health care provider’ means—

- 1 “(i) post-secondary educational insti-
2 tutions offering health care instruction,
3 teaching hospitals, and medical schools;
4 “(ii) community health centers or
5 health centers providing health care to mi-
6 grants;
7 “(iii) local health departments or
8 agencies;
9 “(iv) community mental health cen-
10 ters;
11 “(v) not-for-profit hospitals;
12 “(vi) critical access hospitals;
13 “(vii) rural hospitals with emergency
14 rooms;
15 “(viii) rural health clinics;
16 “(ix) not-for-profit nursing homes or
17 skilled nursing homes;
18 “(x) hospice providers;
19 “(xi) emergency medical services fa-
20 cilities;
21 “(xii) rural dialysis facilities;
22 “(xiii) elementary, secondary, and
23 post-secondary school health clinics; and

1 “(xiv) consortia of health care pro-
2 viders consisting of one or more entities
3 described in clauses (i) through (xiii).”.

4 (3) DEFINITION OF RURAL FOR HEALTH CARE
5 SUPPORT.—Section 254(h)(7) of such Act is further
6 amended by adding at the end the following new
7 subparagraph:

8 “(J) RURAL AREA.—Within 180 days after
9 the date of enactment of the Consumer Protec-
10 tion and Broadband Promotion Act, the Com-
11 mission shall prescribe regulations that provide
12 that, for purposes of the rural health care uni-
13 versal service support mechanisms established
14 pursuant to this subsection, a ‘rural area’ is—

15 “(i) any incorporated or unincor-
16 porated place in the United States, its ter-
17 ritories and insular possessions (including
18 any area within the Federated States of
19 Micronesia, the Republic of the Marshall
20 Islands and the Republic of Palau) that
21 has no more than 20,000 inhabitants
22 based on the most recent available popu-
23 lation statistics from the Census Bureau;

24 “(ii) any area located outside of the
25 boundaries of any incorporated or unincor-

1 porated city, village, or borough having a
2 population exceeding 20,000;

3 “(iii) any area with a population den-
4 sity of fewer than 250 persons per square
5 mile; or

6 “(iv) any place that qualified as a
7 ‘rural area’ and received support from the
8 rural health care support mechanism pur-
9 suant to the Commission’s rules in effect
10 prior to December 1, 2004, and that con-
11 tinues to qualify as a ‘rural area’ pursuant
12 to such rules.”.

13 (b) SCHOOLS, LIBRARIES, RURAL HEALTH CARE,
14 LIFE-LINE, LINK-UP, AND TOLL LIMITATION HOLD
15 HARMLESS.—Except as provided in subsections (h)(1)(A),
16 (h)(7)(B), and (h)(7)(J) of section 254 of the Communica-
17 tions Act of 1934 (47 U.S.C. 254), as amended by sub-
18 section (a)—

19 (1) nothing in this Act (or the amendments
20 made by this Act) shall be construed as limiting,
21 changing, modifying, or altering the amount of sup-
22 port or means of distribution for the schools, librar-
23 ies, rural health care, life-line, link-up, and toll limi-
24 tation programs; and

1 (2) the Federal Communications Commission
2 shall ensure that such amendments do not result in
3 a decrease of such support to a level below the level
4 for the fiscal year preceding the fiscal year in which
5 this Act is enacted.

6 **SEC. 408. TELECOMMUNICATIONS SERVICES FOR LIBRAR-**
7 **IES.**

8 Section 254(h)(4) of the Communications Act of
9 1934 (47 U.S.C. 254(h)(4)) is amended to read as follows:

10 “(4) CERTAIN USERS NOT ELIGIBLE.—Notwith-
11 standing any other provision of this subsection, the
12 following entities are not entitled to preferential
13 rates or treatment as required by this subsection:

14 “(A) An entity operated as a for-profit
15 business.

16 “(B) A school described in paragraph
17 (7)(A) with an endowment of more than
18 \$50,000,000.

19 “(C) A library or library consortium not el-
20 igible for assistance under the Library Services
21 and Technology Act (20 U.S.C. 9101 et seq.)
22 from a State library administrative agency.

23 “(D) A library or library consortium not
24 eligible for assistance funded by a grant under
25 section 261 of the Library Services and Tech-

1 nology Act (20 U.S.C. 9161) from an Indian
2 tribe or other organization.”.

3 **SEC. 409. AUDITS.**

4 (a) STATE AUDITS.—Section 214(e) of the Commu-
5 nications Act of 1934 (47 U.S.C. 214(e)), as amended by
6 section 406, is amended by adding at the end the fol-
7 lowing:

8 “(10) AUDITS.—Each State commission that
9 designates an eligible telecommunications carrier,
10 and the Commission, with respect to eligible tele-
11 communications carriers designated by it, shall pro-
12 vide for random periodic audits of each such carrier
13 with respect to its receipt and use of universal serv-
14 ice support.”.

15 (b) FEDERAL AUDITS.—The Federal Communica-
16 tions Commission, in consultation with the Administrator
17 of the Universal Service Administrative Company, shall—

18 (1) ensure the integrity and accountability of all
19 programs established under section 254 of the Com-
20 munications Act of 1934 (47 U.S.C. 254(h)); and

21 (2) not later than 180 days after the date of
22 enactment of this Act, establish rules identifying ap-
23 propriate fiscal controls and accountability standards

- 1 that shall be applied to all Federal universal support
- 2 programs.

○