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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

May 24, 2006 (10:25 a.m.)
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TITLE I—PROMOTING VIDEO COMPETITION

Subtitle A—Video Franchising

SEC. 101. APPLICATION OF TITLE VI TO ALL FACILITIES-BASED PROVIDERS OF VIDEO PROGRAMMING.

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

(b) CABLE SERVICE.—Section 602(6) of the Communications Act of 1934 (47 U.S.C. 522(6)) is amended to read as follows:

“(6) the term ‘cable service’ means the transmission to subscribers of video programming or other programming service provided through a cable system (including any subscriber interaction required for the selection or use of such video programming or other programming service), except to the extent that such video programming or other programming service is provided as part of an Inter-
net access service (as such term is defined in section 231(e)(4), and is not video programming provided via an Internet access service that is made available by a cable operator solely to its cable subscribers.’’).

(c) CABLE SYSTEM.—Section 602(7) of the Communications Act of 1934 (47 U.S.C. 522(7)) is amended—

(1) by striking ‘‘which includes video programming’’; and

(2) by inserting after ‘‘cable service’’ the following: ‘‘, without regard to delivery technology, including Internet protocol technology or any successor technology, which is located at least in part in the public rights-of-way’’.

SEC. 102. ACCELERATED DISPOSITION OF FRANCHISE APPLICATIONS.

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

“SEC. 630. DEADLINES FOR FRANCHISING AUTHORITY APPROVALS.

“(a) ACCELERATED APPROVAL.—If an applicant for an additional competitive franchise is an entity previously authorized to occupy the public rights-of-way, or an affiliate of such entity, and proposes in writing to provide cable services using existing wireline facilities within the
public rights-of-way in the franchise area, and to provide
cable service on the same terms and conditions as those
contained in the franchise most recently granted to the
incumbent cable operator for each local geographic area,
respectively, covered by the application, the franchising
authority shall grant the application within 30 business
days of receipt of the completed application from the oper-
ator, or at the first regular business meeting following
public notice of the operator’s application, whichever is
later. If the franchising authority fails to act within the
specified period, the application shall be deemed granted
unless the applicant and the franchising authority have
agreed to an extension of the deadline.

“(b) STANDARD FRANCHISE.—

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

“(2) PREREQUISITE NEGOTIATIONS.—

“(A) IN GENERAL.—Prior to applying for
a standard franchise, an eligible person shall re-
quest and make itself available to negotiate the
terms and conditions of a franchise with a franchising authority.

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

“(3) NOTICE.—If a mutually acceptable negotiated franchise agreement has not been executed 60 days after the applicant makes such request, the applicant shall file with the franchising authority written notice of its election to provide cable service under a standard franchise unless both the franchise authority and the applicant mutually agree to an extension of time for such deadline. Such notice shall be filed at least 30 days before the cable operator commences providing cable service pursuant to the standard franchise, and shall contain the information required by paragraph (4). A cable operator that files such notice under this section shall update any information contained in such notice that is no
longer accurate and correct throughout the term of
the standard franchise.

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

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

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

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

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

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

“(F) a geographical identification of the
franchise area in which the operator intends to
offer cable service pursuant to the standard
franchise, including an identification of the ini-
tial service area within the franchise area where
the operator intends to offer cable service;
“(G) a declaration by the operator that the operator will comply with the lawful and non-discriminatory rights-of-way requirements of the franchising authority under subsection (f);

“(H) a declaration by the person that it will comply with all lawful and nondiscriminatory consumer protection and customer service rules authorized under section 632(b); and

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

“(5) EFFECTIVENESS.—

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

“(B) EFFECT ON STATE AND LOCAL LAW.—With respect to any person that obtains a standard franchise, any State or local law, regulation, or ordinance requiring such a cable operator to obtain a franchise other than a standard franchise is deemed preempted and
superseded except as provided under subpara-
graph (C). If a cable operator that was pre-
viously providing cable service in such area pur-
suant to a negotiated franchise obtains a stand-
ard franchise for a franchise area, any fran-
chise agreement under section 621 or any State 
or local law, regulation, or ordinance for the 
provision of cable service by such operator in 
such franchise area shall be deemed null and 
void.

“(C) Reversion to traditional fran-
chise upon withdrawal of competitive 
franchise operator.—During the term of a 
standard franchise, if a cable operator providing 
cable service pursuant to a standard franchise 
becomes the sole provider of cable service within 
a franchise area, the franchise authority have 
the right to accelerate the term of the standard 
franchise via notice to such cable operator, but 
shall not be permitted to make the termination 
of such standard franchise earlier than 180 
days after such notice is received by the cable 
operator.

“(6) Eligibility for standard fran-
chise.—The following persons or groups are eligible
to obtain a standard franchise under this section on
or after the date of enactment of the Consumer
Competition and Broadband Promotion Act:

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

“(B) EXISTING PROVIDERS OF CABLE
SERVICE.—An incumbent cable operator that is
providing cable service in a franchise area
under a cable franchise obtained pursuant to
section 621 may, in its discretion, elect to ter-
minate such negotiated franchise and obtain a
standard franchise but shall only be eligible for
such standard franchise after providing the rel-
evant franchise authority with written notice of
its election consistent with the requirements of
subsections (b)(3) and (b)(4) of this section,
and on or after the date that another cable op-
erator within the franchise area operating pur-
suant to a standard franchise begins offering cable service to more than 5 percent of residential households within such operator’s franchise area.

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

“(i) a single franchising authority is solely responsible for the negotiation, issuance and enforcement of franchise requirements under section 621 or any State or local law; or

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

“(I) the terms of such franchise are not inconsistent with the terms required in section 631 of this Act; and

“(II) the grant of a such a franchise is concurrently available to any other cable operator operating within such franchise authority upon the entry of a new cable operator under such terms.
“SEC. 631. TERMS OF STANDARD FRANCHISE.

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

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

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

“(d) PEG AND I-NET REQUIREMENTS.—

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

The increase may not exceed the greater of—

“(A) 1 channel; or

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

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

“(3) PRODUCTION AND DELIVERY OF PROGRAMMING.—The production of any programming provided under this subsection and delivery of such programming to the signal origination point or points shall be the sole responsibility of the franchising authority.

“(4) INTERCONNECTION; COST-SHARING.—Unless 2 cable operators (which may include a cable operator providing cable service under a standard franchise) otherwise agree to the terms for interconnection and cost sharing, such video service providers shall comply with regulations prescribed by the Commission providing for—
“(A) the interconnection between cable operators in a franchise area for transmission of public, educational, or governmental programming, without material degradation in signal quality or functionality; and

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

“(5) DISPLAY OF PROGRAM INFORMATION.—A cable operator authorized under a standard franchise shall display the program information for public, educational, or governmental programming in any print or electronic program guide in the same manner in which it displays program information for other video programming in the franchise area. The video service provider shall not omit public, educational, or governmental programming from any navigational device, guide, or menu containing other video programming that is available to subscribers in the franchise area.

“(6) FINANCIAL SUPPORT.—

“(A) IN GENERAL.—A franchising authority for a franchise area shall require a cable operator with a standard franchise providing cable service in that franchise area to pay the fran-
chising authority annually, in general support
of public, educational, and governmental use
and institutional networks (as defined in section
611(f)), the greater of—

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

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

“(B) CALCULATION DATA.—A franchising
authority for a franchising area may require a
cable operator providing cable service in that
franchise area to provide to the franchising au-
thority information sufficient to calculate the
per-subscriber equivalent fee allowed by sub-
paragraph (A)(ii). The information shall be entitled to treatment as confidential and proprietary business information. The payments made by a video service provider pursuant to subparagraph (A) shall be assessed and collected in a manner consistent with section 622.

“(7) EXISTING INSTITUTIONAL NETWORKS.—

“(A) IN GENERAL.—A franchising authority may require a cable operator authorized to provide cable service under a standard franchise to continue to provide any institutional network provided by that cable operator before obtaining such franchise.

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

“(8) EFFECT ON EXISTING LAW.—Except as expressly provided in this subsection, the provisions of section 611 shall apply to a cable operator authorized to provide cable service under a standard franchise.

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

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

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

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

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

“(D) revenue received by the cable operator as compensation for carriage of video programming or other programming service on that operator’s cable service;
“(E) all revenue derived from the cable operator’s cable service pursuant to compensation arrangements for advertising; and

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

“(3) EXCLUDED ITEMS.—The term ‘gross revenues’ shall not include—

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

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

“(C) subject to paragraph (4), any revenues received by the cable operator or its affiliates from the provision of services or capabilities other than cable service, including telecommunications services, Internet access services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionally integrated, with cable service;
“(D) any revenues received by the cable operator or its affiliates for the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing;

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

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

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

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

“(I) reimbursement by programmers of marketing costs actually incurred by the cable
operator for the introduction of new program-
ming; and

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

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

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

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

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

“(g) EFFECT ON EXISTING LAW.—Except as expressly provided in this subsection, the provisions of section 622 shall apply to a cable operator authorized to provide cable service under a standard franchise.

“(h) BUILD-OUT AND ANTI-DISCRIMINATION.—
“(1) PROHIBITION.—A cable operator authorized under a standard franchise to provide cable service in a franchise area shall not deny access to its cable service to any group of potential residential cable service subscribers in such franchise area because of the race, color, religion, national origin, sex, or income of the residents of the local area in which such group resides.

“(2) NEGOTIATED BUILD-OUT.—Not later than 30 days after the effective date of a standard franchise, the cable operator and the franchising authority shall establish a reasonable period of time and a deployment schedule within which such operator’s cable system shall become capable of providing cable service to all households in the franchise area. Any such schedule agreed to by the cable operator and the franchise authority shall be incorporated as part of the standard franchise and filed with the relevant franchise authority. Failure to reach agreement on such deployment schedule within 60 days shall result in the incorporation of buildout terms set forth in paragraph (3) as part of the standard franchise agreement for such operator.

“(3) DEFAULT BUILD-OUT.—
“(A) SCHEDULE.—If such cable operator is an incumbent local exchange carrier (or an affiliate thereof), it shall make its cable system capable of providing cable service to all households in the franchise area in accordance with the following schedule:

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

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

“(iii) To not less than 80 percent of such households in its franchise area within no more than 7 years after the effective date of the standard franchise.

“(B) SPARSELY POPULATED AREAS.—In determining compliance with the percentages required under this paragraph, the total number of households required to be served in any franchise area shall be reduced by the number
of households in any geographic part of the franchise area in which there are fewer than 20 households per square mile.

“(4) MONITORING AND INSPECTION.—A franchising authority municipality shall have the right to monitor and inspect the deployment of cable services by such cable operator. The operator shall submit semiannual progress reports detailing the current provision of cable services in accordance with the deployment schedule established pursuant to paragraph (2), and the cable operator’s deployment plans for the next 6 months.

“(5) ENFORCEMENT.—If the franchise authority determines that a cable operator violated paragraph (1) or the deployment schedule established by paragraph (2), it may—

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

“(B)(i) revoke the standard franchise if it determines, after notice and an opportunity for a hearing, that the video service provider has willfully violated this section; or
“(ii) bring a civil action against the cable operator in any court of competent jurisdiction for damages, an order directing the cable operator to rectify the noncompliance, or other appropriate relief.

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

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

“(k) INCORPORATION OF STANDARD TERMS.—A franchise authority may include other standard terms or conditions as part of its standard franchise, provided however that such standard terms—

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

“(2) are materially equivalent to terms and conditions that are included in the franchise agreements of all other cable operators providing cable service within the relevant franchise area.
SEC. 103. CONFORMING AMENDMENTS; EFFECTIVE DATE.

(a) Exclusion of PEG Support from Definition of Franchise Fee.—Section 622(g)(2) of the Communications Act of 1934 (47 U.S.C. 542(g)(2)) is amended—

(1) by striking “in the case of any franchise in effect on the date of enactment of this title,” in subparagraph (B); and

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

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

(b) Effective Date.—This Act and the amendments made by this Act shall take effect 120 days after date of enactment.

(c) Regulations.—Prior to such effective date, the Federal Communications Commission shall, as necessary, adopt regulations under title VI or other provisions of the Communications Act of 1934 to reflect the amendments made by this Act.
Subtitle B—Digital Content

Protection; Related Matters

SEC. 151. PROTECTION OF DIGITAL BROADCAST VIDEO CONTENT.

(a) IN GENERAL.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end the following:

“(z) Have authority with respect to digital television receivers to adopt such regulations and certifications as are necessary to implement the Report and Order in the matter of Digital Broadcast Content Protection, FCC 03–273, as ratified by the Congress in section 102(b) of the Consumer Competition and Broadband Promotion Act, with the exclusive purpose of limiting the indiscriminate redistribution of digital television content over the Internet or similar distribution platforms, including the authority to reconsider, amend, repeal, supplement, and otherwise modify any such regulations and certifications, in whole or in part, only for that purpose.”.

(b) RATIFICATION OF FCC REPORT AND ORDERS.—The Report and Order in the matter of Digital Broadcast Content Protection, FCC 03–273, and the Order in the matter of Digital Output Protection Technology and Recording Method Certifications, FCC 04–193, are ratified, subject to the limitations set forth in subsection (d), and
shall become effective 12 months after the date of enactment of this Act.

(c) Expedited Proceeding for Certifying Technologies for Use in Distance Education.—Within 30 days after the date of enactment of this Act, the Federal Communications Commission shall initiate a further proceeding for the approval of digital output protection technologies and recording methods for use in the course of distance learning activities. The proceeding shall be conducted in accordance with the expedited procedures established for the Interim Approval of Authorized Digital Output Protection Technologies and Authorized Recording Methods in the Report and Order described in subsection (b). The proceeding shall have no effect on certifications made pursuant to the Order in the matter of Digital Output Protection Technology and Recording Method Certifications described in subsection (b), as ratified in that subsection.

(d) Limitations.—

(1) In General.—Nothing in this Act or section 303(z) of the Communications Act of 1934 (47 U.S.C. 303(z)), or in regulations of the Commission adopted pursuant thereto, shall—

(A) limit the Commission’s authority to approve digital output protection technologies and
recording methods that allow for the redistribution of digital broadcast content within the home or similar environment, or the use of the Internet to transmit digital broadcast content, where such technologies and recording methods adequately protect such content from indiscriminate redistribution; or

(B) be construed to affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under title 17, United States Code.

(2) USE OF REDISTRIBUTION CONTROL DESCRIPTOR.—Licensees of television broadcast stations may not utilize the Redistribution Control Descriptor, as adopted by the Report and Order described in subparagraph (b), to limit the redistribution of news and public affairs programming the primary commercial value of which depends on timeliness. The Federal Communications Commission shall allow each broadcaster or broadcasting network to determine whether the primary commercial value of a particular news program depends on timeliness. The Commission may review any such determination by a broadcaster or broadcasting network if it receives bona fide complaints alleging, or otherwise
has reason to believe, that particular broadcast digital television content has violated this subsection.

(3) **PROPERTY RIGHTS.**—The Commission shall require that any authorized redistribution control technology and any authorized recording method technology approved by the Commission under this section that is publicly offered for adoption by licensees, be licensed on reasonable and nondiscriminatory terms and conditions, including terms preserving a licensee’s ability to assert any patent rights necessary for implementation of the licensed technology.

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

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

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"SEC. 342. MARKETPLACE ADOPTION OF DIGITAL AUDIO BROADCAST PROTECTION TECHNOLOGY.

“(a) ADOPTION OF DIGITAL AUDIO BROADCAST PROTECTION TECHNOLOGY IN THE MARKETPLACE.—Li-
censees and permittees of the Commission providing digital audio broadcast service, and providers of digital audio broadcast technology approved by the Commission, util-
izing the in-band, on-channel technical standard for digital audio broadcast transmissions under consideration in
```
MM Docket No. 99–235, or any successor regulations, shall adopt in the marketplace a digital audio broadcast protection technology that prevents the disaggregation and indiscriminate redistribution of content contained in such transmissions and in reception devices capable of receiving such digital audio broadcast transmissions before reception devices capable of such disaggregation or indiscriminate redistribution are marketed or made available in interstate commerce.

“(b) LIMITATIONS.—The digital audio broadcast protection technology adopted in the marketplace pursuant to subsection (a)—

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

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

“(3) shall not make obsolete devices already manufactured and distributed in the marketplace before the adoption of such digital audio broadcast protection technology; and

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

“(c) NO DELAY IN THE ROLLOUT OF HD RADIO.—Nothing in this section shall delay the adoption of final
operational rules for digital audio broadcasting by the Commission.

“(d) Activities of Performing Rights and Mechanical Rights Organizations.—Nothing shall preclude or prevent a performing rights organization or a mechanical rights organization, or any entity owned in whole or in part by, or acting on behalf of, such organizations, from monitoring public performances or other uses of copyrighted works contained in such transmissions. The Commission may require that any such organization or entity be given a license on either a gratuitous basis or for a de minimus fee to cover only the reasonable costs to the licensor of providing the license, and on reasonable, non-discriminatory terms, to access and retransmit as necessary any content contained in such transmissions protected by content protection or similar technologies, provided that such licenses are for purposes of carrying out the activities of such organizations or entities in monitoring the public performance or other uses of copyrighted works and that such organizations or entities employ reasonable methods to protect any such content accessed from further distribution.

“(e) Rulemaking.—The Commission may adopt rules clarifying and implementing the provisions of this section, but may not approve any digital audio content
protection technology developed pursuant to subsection (a) except to the extent that the technology generates radio frequency energy subject to Part 15 of the Commission’s rules (47 CFR 15.1 et seq.).”.

SEC. 153. ELIMINATION OF TERRESTRIAL LOOPHOLE.

(a) IN GENERAL.—

(1) Definition of satellite cable programming.—Section 705(d)(1) of the Communications Act of 1934 (47 U.S.C. 605(d)(1)) is amended by striking “which is transmitted via satellite and”.

(2) Conforming Amendment.—Section 628(i)(3) of the Communications Act of 1934 (47 U.S.C. 548(h)(3)) is amended by striking “such programming is retransmitted by satellite and”.

(b) Certain multichannel video programming distributors disqualified from section 628 remedies.—Section 628(c)(3) of the Communications Act of 1934 (47 U.S.C. 548(c)(3)) is amended by adding at the end thereof the following:

“(C) Complainant eligibility.—

“(i) In general.—Notwithstanding any other provision of this Act, a multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection (b) or
(c)(2)(C) with respect to national sports programming may not commence an adjudicatory proceeding at the Commission or avail itself of any other remedy under title V or any other provision of this Act if the aggrieved distributor provides any national sports programming under an exclusive contract to distribute that programming.

“(ii) NATIONAL SPORTS PROGRAMMING.—In this subparagraph, the term ‘national sports programming’ means any live broadcast event involving teams of the National Football League, the National or American Baseball League, the National Hockey League, or the National Basketball Association, the National Collegiate Athletic Association, or any other equivalent national sports organization identified by the Commission by rule.”.

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

(d) PROCEDURE.—Section 628 of the Communications Act of 1934 (47 U.S.C. 548) is amended by striking subsections (d), (e), and (f) and inserting the following:
“(d) Adjudicatory Proceeding.—

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

“(2) Request for production of agree-
ments.—In any proceeding commenced under para-
graph (1), the Commission shall request from a
party, and the party shall produce, such agreements
between the party and a third party relating to the
distribution of multichannel video programming dis-
tributor programming that the Commission believes
to be relevant to its decision regarding the matters
at issue in such adjudicatory proceeding.

“(3) Confidentiality to be maintained.—
The production of any agreement under paragraph
(2) and its use in a Commission decision in the ad-
judicatory proceeding under paragraph (1) shall be
subject to such provisions ensuring confidentiality as
the Commission may by regulation determine.

“(e) Remedies for Violations.—
“(1) Remedies Authorized.—Upon completion of an adjudicatory proceeding under subsection (d), the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to an aggrieved multichannel video programming distributor.

“(2) Additional Remedies.—The remedies provided under paragraph (1) are in addition to any remedy available to an multichannel video programming distributor under title V or any other provision of this Act.

“(f) Procedures.—

“(1) In General.—The Commission shall prescribe regulations to implement this section.

“(2) Content of Regulations.—The regulations required under paragraph (1) shall—

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

“(B) establish procedures for the Commission to collect such data as the Commission requires to carry out this section, including the
right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged to violate this section; and

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

SEC. 154. DBS SERVICES REQUIREMENTS.

(a) IN GENERAL.—Section 335 of the Communications Act of 1934 (47 U.S.C. 335) is amended by adding at the end the following:

“(c) Nationwide Service Requirements for DBS and Direct-to-home Satellite Carriers.—

“(1) IN GENERAL.—A satellite carrier that offers multichannel audio or video programming service or Internet access service directly to consumers and that has more than 250,000 subscribers in the United States shall make the service or services available at comparable prices and terms in non-contiguous states using any additional or replacement satellites or transponders that are purchased, leased, accessed, licensed, or otherwise used for the service following the date of the enactment of the Consumer Competition and Broadband Promotion Act.
“(2) Nationwide coverage of DBS and direct-to-home satellites.—The Commission may not grant a license to the operator of any satellite in the Fixed Satellite Service, the Direct Broadcast Satellite service, the Mobile-Satellite Service, or the Digital Audio Radio Service that is capable of providing multichannel audio or video programming distribution or Internet access services directly to consumers in the United States unless the Commission determines that, to the extent technically feasible, the satellite is capable of providing services to consumers in Alaska and Hawaii using signal power levels that are within 10 percent of the peak power levels that are available in the continental United States.

“(3) Satellite carrier defined.—In this subsection, the term ‘satellite carrier’ means an entity that uses the facilities of a satellite in the Fixed-Satellite Service, the Direct Broadcast Satellite service, the Broadcast Satellite Service, the Mobile-Satellite Service, or the Digital Audio Radio Service that is licensed by the Commission under part 25 of title 47 of the Code of Federal Regulations, or is licensed or authorized by a foreign government.”
(b) **IMPLEMENTATION.**—The Federal Communications Commission shall adopt such rules and policies as are necessary to implement and enforce section 335(c) of the Communications Act of 1934 (47 U.S.C. 335(c)).

**SEC. 155. INTERNET VIDEO.**

Section 616(a)(2) of the Communications Act of 1934 (47 U.S.C. 536(a)(2)) is amended by striking “distributors” and inserting “distributors, or against other video programming distributors using any medium or platform for such programming distribution including alternative mediums or platforms offered by the vendor,”.

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

(a) **RULES REINSTATED.**—The video description rules of the Federal Communications Commission contained in the report and order identified as Implementation of Video Description of Video Programming, Report and Order, 15 F.C.C.R. 15,230 (2000), shall, notwithstanding the decision of the United States Court of Appeals for the District of Columbia Circuit in *Motion Picture Association of America, Inc., et al., v. Federal Communications Commission, et al.* (309 F. 3d 796, November 8, 2002), be considered to be authorized and ratified by law.

(b) **CONTINUING AUTHORITY OF COMMISSION.**—The Federal Communications Commission—
(1) shall, within 45 days after the date of enactment of this Act, republish its video description rules contained in the report and order *Implementation of Video Description of Video Programming, Report and Order*, 15 F.C.C.R. 15,230 (2000); (2) may amend, repeal, or otherwise modify such rules; and (3) shall initiate a proceeding within 120 days after the date of enactment of this Act, and complete that proceeding within 1 year, to consider incorporating accessible information requirements in its video description rules.

(e) ACCESSIBLE INFORMATION DEFINED.—In this section, the term “accessible information” may include written information displayed on television screens during regular programming, hazardous warnings and other emergency information, local and national news bulletins, and any other information the Commission deems appropriate.
TITLE II—PROMOTING VOICE
AND DATA COMPETITION

SEC. 201. INTERNET NONDISCRIMINATION/NETWORK NEUTRALITY REQUIREMENTS.

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

“SEC. 12. INTERNET NEUTRALITY.

“(a) DUTY OF BROADBAND SERVICE PROVIDERS.—With respect to any broadband service offered to the public, each broadband service provider shall—

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

“(2) not prevent or obstruct a user from attaching or using any device to the network of such broadband service provider, only if such device does not physically damage or substantially degrade the use of such network by other subscribers;

“(3) provide and make available to each user information about such user’s access to the Internet, and the speed, nature, and limitations of such user’s broadband service;
“(4) enable any content, application, or service made available via the Internet to be offered, provided, or posted on a basis that—

“(A) is reasonable and nondiscriminatory, including with respect to quality of service, access, speed, and bandwidth;

“(B) is at least equivalent to the access, speed, quality of service, and bandwidth that such broadband service provider offers to affiliated content, applications, or services; and

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

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

“(6) not install or utilize network features, functions, or capabilities that impede or hinder compliance with this section.
“(b) Certain Management and Business-Related Practices.—Nothing in this section shall be construed to prohibit a broadband service provider from engaging in any activity, provided that such activity is not inconsistent with the requirements of subsection (a), including—

“(1) protecting the security of a user’s computer on the network of such broadband service provider, or managing such network in a manner that does not distinguish based on the source or ownership of content, application, or service;

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

“(3) offering consumer protection services (including parental controls for indecency or unwanted content, software for the prevention of unsolicited commercial electronic messages, or other similar capabilities), if each user is provided clear and accurate advance notice of the ability of such user to refuse or disable individually provided consumer protection capabilities;
“(4) handling breaches of the terms of service offered by such broadband service provider by a subscriber, provided that such terms of service are not inconsistent with the requirements of subsection (a); or

“(5) where otherwise required by law, to prevent any violation of Federal or State law.

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

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

“(1) permit any aggrieved person to file a complaint with the Commission concerning any violation of this section; and

“(2) establish enforcement and expedited adjudicatory review procedures consistent with the objectives of this section, including the resolution of any complaint described in paragraph (1) not later than 90 days after such complaint was filed, except for good cause shown.

“(e) ENFORCEMENT.—
“(1) IN GENERAL.—The Commission shall enforce compliance with this section under title V, except that—

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

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

“(2) SPECIAL ORDERS.—In addition to any other remedy provided under this Act, the Commission may issue any appropriate order, including an order directing a broadband service provider—

“(A) to pay damages to a complaining party for a violation of this section or the regulations hereunder; or

“(B) to enforce the provisions of this section.

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

“(1) AFFILIATED.—The term ‘affiliated’ includes—

“(A) a person that (directly or indirectly) owns or controls, is owned or controlled by, or
is under common ownership or control with, an-
other person; or

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

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

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

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

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

(b) REPORT ON DELIVERY OF CONTENT, APPLICA-
TIONS, AND SERVICES.—Not later than 270 days after the
date of enactment of this Act, and annually thereafter,
the Federal Communications Commission shall transmit
a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives on the—

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

(2) ability of competing providers of transmission capability to transmit and send such information into and over broadband networks;

(3) price, terms, and conditions for transmitting and sending such information into and over broadband networks;

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

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

SEC. 202. OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.

(a) IN GENERAL.—For purposes of this section, an incumbent local exchange carrier shall be treated as a common carrier, telecommunications carrier, local exchange carrier, and incumbent local exchange carrier with
respect to all wireline facilities owned or controlled by such carrier or any affiliate, regardless of the—

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

(2) transmission and switching technology used;

or

(3) physical composition of such wireline facilities.

(b) COMPLIANCE WITH 1934 ACT.—A carrier described in subsection (a), and any affiliate thereof, shall comply with the requirements of sections 201, 202, 224, 251, 252, 259, and 271 of the Communications Act of 1934 (47 U.S.C. 201, 202, 224, 251, 252, 259, and 271) with respect to any request by a telecommunications carrier for access to such wireline facilities, or for transmission provided using such facilities, for the provision of any telecommunications, telecommunications service, or information service, regardless of the transmission or switching technology used by such requesting telecommunications carrier to provide such services.

(c) COMMON TERMINOLOGY.—The terms used in this section shall have the same meaning as such terms are given in sections 3 and 251(h) of the Communications Act of 1934 (47 U.S.C. 153 and 251(h)).
Title VII of the Communications Act of 1934 (47 U.S.C. 601 et seq.) is amended by adding at the end thereof the following:

"SEC. 715. STAND-ALONE BROADBAND SERVICE.

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

"(b) DEFINITIONS.—In this section:

"(1) The term ‘broadband service’ means a 2-way transmission service (whether offered separately or as part of a bundle of services) offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used that connects to the Internet and transmits information of a user’s choosing at a speed, as shall be periodically updated by the Commission, of at least 200 kilobits per second in at least one direction.

"(2) The term ‘broadband service provider’ means a person or entity that controls, operates, or resells and controls any facility used to provide broadband service.
“(3) IP-ENABLED VOICE SERVICE.—The term ‘IP-enabled voice service’ means the provision of real-time 2-way voice communications offered to the public, or such classes of users as to be effectively available to the public, transmitted through customer premises equipment using IP protocol, or a successor protocol, (whether part of a bundle of services or separately) with interconnection capability such that the service can originate traffic to, and terminate traffic from, the public switched telephone network.”

SEC. 204. BETTER DATA ON LOCAL COMPETITION IN DIFFERENT PRODUCT MARKETS.

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

(b) DATA COLLECTION.—In connection with its inquiry, the Commission shall require that all providers of telecommunications service, broadband service, and IP-enabled voice service submit annual reports to the Commission describing the extent to which they have deployed their own local transmission facilities. At a minimum, pro-
providers shall report separately on their deployment of loop facilities in each wire center used to provide service in different product markets served by providers of telecommunications service, broadband service, and IP-enabled voice service. In defining product markets for these purposes, the Commission shall utilize the methodology set forth in the United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines and shall, at a minimum, distinguish among the products demanded by—

(1) residential customers;

(2) small and medium-sized business customers;

and

(3) large business customers.

(c) REPORT TO CONGRESS.—Not later than one year after the date of enactment of this Act, and each year thereafter, the Commission shall submit a report to Congress describing the extent to which providers of telecommunications service, broadband service, and IP-enabled voice service have deployed their own local transmission facilities. Such report shall analyze separately the extent of actual facilities-based competition in each wire center in the product markets described in subsection (b).

(d) DEFINITIONS.—In this section:
(1) Broadband service.—The term “broadband service” has the meaning given that term in section 715(b)(1) of the Communications Act of 1934.

(2) IP-enabled voice service.—The term “IP-enabled voice service” has the meaning given that term in section 715(b)(3) of the Communications Act of 1934.

(3) Local transmission facilities.—The term “local transmission facilities” means wireless and wireline transmission facilities used to transmit information or signals to, from or among locations within a wire center.

SEC. 205. IMPROVED ENFORCEMENT OPTIONS.

(a) Increased Penalties.—Section 503(b)(2)(B) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)(B)) is amended—

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

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

(b) Statute of Limitations.—Section 503(b)(6) of the Communications Act of 1934 (47 U.S.C. 503(b)(6)) is amended—
(1) by striking “or” after the semicolon in subparagraph (A)(ii);
(2) redesignating subparagraph (B) as subparagraph (C); and
(3) inserting after subparagraph (A) the following:

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

SEC. 206. COMPETITION IN SPECIAL ACCESS MARKETS.

(a) Replacement of Current Rules.—Within 180 days after the date of enactment of this Act, the Commission shall issue a final order, which shall take effect not later than 30 days after the date on which it is issued, requiring integrated incumbent local exchange carriers to offer special access services pursuant to interstate tariffs that—

(1) except as provided in section 207, are subject to the special access service price index established under subsection (b)(1); and
(2) include service quality measurements and, where applicable, service quality benchmarks for pre-ordering, ordering, provisioning, maintenance, and repair that apply uniformly to all integrated incumbent local exchange carriers and for which each integrated incumbent local exchange carrier shall file service quality reports.

(b) Special Access Service Price Index.—

(1) In general.—In the proceeding conducted under subsection (a), the Commission shall—

(A) develop a methodology for establishing and revising an index that defines the maximum prices that may be charged for services subject to the index while preserving incentives to offer subject services more efficiently;

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

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

(ii) reduces those rates to the level that would have been in effect if the Commission had applied an annual productivity adjustment for special access service, less...
inflation, beginning on July 1, 2004, and on each subsequent July 1 prior to the date of enactment of this Act; and

(C) establish procedures under which, beginning with the first annual access filing after the order required by subsection (a) is issued and annually thereafter, the Commission shall—

(i) adjust the index by an annual productivity adjustment to reflect productivity gains achievable by integrated incumbent local exchange companies in excess of the economy as a whole; and

(ii) ensure that any reductions required by this section are provided proportionately to all special access customers and across all special access services.

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

SEC. 207. CUSTOMER CONTRACTS.

(a) IN GENERAL.—In the rulemaking proceeding under section 206(a), the Commission shall adopt rules that—
(1) allow integrated incumbent local exchange carriers to continue to offer special access pursuant to volume and term discounts; but

(2) prohibit integrated incumbent local exchange carriers from conditioning the availability of volume and term discounts on customers’ compliance with requirements that do not relate to the reduction of costs yielded by volume and term commitments.

(b) EXAMPLES OF CONDITIONS UNRELATED TO VOLUME AND TERM EFFICIENCIES.—For purposes of subsection (a)(2), among the conditions that may be prohibited is any requirement that a customer—

(1) discontinue purchasing, and not purchase during the term of the contract, services from the integrated incumbent local exchange carriers’ competitors;

(2) increase the volume of special access purchased from the integrated incumbent local exchange carrier without a corresponding and proportionate increase in the discount offered under the contract; and

(3) separate the special access purchases of its business units for purposes of achieving required volumes.
(c) **EXISTING CONTRACTS.**—If a customer receiving special access service from an integrated incumbent local exchange carrier under a contract that is in effect on the date of enactment of this Act that includes a condition prohibited by the Commission’s rules adopted under subsection (a), the customer may terminate the contract, notwithstanding any provision of the contract or any other provision of Federal, State, or local law, without liability to the carrier for premature termination or any penalty provided by the contract or law in order to facilitate the ability of customers to purchase special access service under interstate tariffs that are subject to the special access service requirements of section 206.

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

(a) **LOW REVENUE SHARE EXCEPTION.**—If an integrated incumbent local exchange carrier demonstrates to the satisfaction of the Commission that its share of total annual special access revenues obtained by incumbent local exchange carriers in a year is less than 15 percent, the Commission may determine that the carrier is not subject to the requirement established under section 206(a) for that year.

(b) **REQUIRED ACCESS EXCEPTION.**—Beginning with the 6th year for which the requirement established under section 206(a) is in effect, if an integrated incumbent local
exchange carrier demonstrates to the satisfaction of the Commission that it is not required to provide access to loops or transport as unbundled network elements in accordance with the standards adopted by the Commission under section 251 of the Communications Act of 1934 (47 U.S.C. 251), the Commission may determine that the carrier is no longer subject to the requirements for special access loops or transport that correspond in capacity to the types of loop or transport for which unbundling is no longer required, but only in locations for which such unbundling is no longer required.

(c) ALTERNATIVE PRICING REGIME.—If an integrated incumbent local exchange carrier is determined by the Commission under subsection (a) or (b) not to be subject to the requirement established under section 206(a), its provision of loop or transport special access service in the deregulated area shall be subject to a separate price index that contains an annual adjustment equal to the rate of inflation used by the Commission for purposes of section 206(b)(1)(A).

SEC. 209. FORBEARANCE.

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

(1) the Commission may not forbear from applying the requirements of this title or any regula-
tion promulgated under this title until 5 years after
the effective date of the Commission’s rules issued
pursuant to section 206(a) of this Act; and

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

SEC. 210. DEFINITIONS.

In this title:

(1) **Annual Productivity Adjustment.**—The term “annual productivity adjustment” means a
percentage determined by the Commission to rep-
resent the productivity gained by integrated incum-
bent local exchange companies in excess of the econ-
omy as a whole.

(2) **Commission.**—The term “Commission”
means the Federal Communications Commission.

(3) **Integrated Incumbent Local Ex-
change Carrier.**—The term “integrated incumb-
ent local exchange carrier” means any local ex-
change carrier, including its affiliates and subsidi-
aries (without regard to the date on which an entity
became or becomes an affiliate or subsidiary), that
itself, or with its affiliates and subsidiaries—
(A) provides wireline local and local exchange and commercial mobile radio services over its own facilities, or the facilities of its affiliates or subsidiaries; and

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

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

(4) Service quality measurement.—The term “service quality measurement” means a uniform definition of a particular wholesale special access pre-ordering, ordering, provisioning, maintenance, or repair function that allows for consistent measurement and comparison of service quality provided by an incumbent local exchange carrier to
itself, its affiliates, its retail customers, and its
wholesale customers.

(5) Service Quality Report.—The term
“service quality report” means a quarterly report by
an integrated incumbent local exchange carrier set-
ting forth its performance in providing the functions
defined by the service quality measurements where
each integrated incumbent local exchange carrier re-
ports separately its performance in providing the
functions to itself, its affiliates, its retail customers,
and its wholesale customers (including any wholesale
customer that requests company-specific reporting).

(6) Special Access.—The term “special ac-
cess” means an interstate service offered by an in-
cumbent local exchange carrier that—

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

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

(i) a local exchange carrier’s offices;

(ii) an interexchange carrier’s points
of presence;

(iii) a wireless carrier’s cell sites or
switching centers; or
(iv) connections between any location in clause (i), (ii), or (iii) and a customer’s premises, including Internet content server locations.

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

TITLE III—ENCOURAGING BROADBAND DEPLOYMENT AND BASIC COMMUNICATIONS RESEARCH

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

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

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

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

“(b) COMMISSION TO FACILITATE USE.—Within 270 days after the date of enactment of that Act, the Commission shall adopt minimal technical and device rules in ET Docket No. 04–186 to facilitate the efficient use of eligible
broadcast television frequencies by certified unlicensed devices, which shall include rules and procedures—

“(1) to protect licensees from harmful interference from certified unlicensed devices;

“(2) to require certification of unlicensed devices designed to be operated in the eligible broadcast television frequencies which shall include testing in a laboratory certified by the Commission to ensure that such devices meet the technical criteria established under this paragraph;

“(3) to address complaints from licensees within the eligible broadcast television frequencies that a certified unlicensed device causes harmful interference, which shall include verification in the field of actual harmful interference; and

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

“(c) DEFINITIONS.—In this section:

“(1) CERTIFIED UNLICENSED DEVICE.—The term ‘certified unlicensed device’ means a device certified under subsection (b)(2).
“(2) Eligible broadcast television frequencies.—The term ‘eligible broadcast television frequencies’ means the following frequencies:

“(A) All frequencies between 54 and 72 megahertz, inclusive.

“(B) All frequencies between 76 and 88 megahertz, inclusive.

“(C) All frequencies between 174 and 216 megahertz, inclusive.

“(D) All frequencies between 470 and 608 megahertz, inclusive.

“(E) All frequencies between 616 and 698 megahertz, inclusive.”.

SEC. 302. MUNICIPAL BROADBAND.

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

(1) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

“(c) Local government provision of advanced telecommunications capability and services.—

“(1) In general.—No State statute, regulation, or other State legal requirement may prohibit or have the effect of prohibiting any public provider from providing, to any person or any public or pri-
vate entity, advanced telecommunications capability
or any service that utilizes the advanced tele-
communications capability provided by such pro-
vider.

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

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

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

“(3) PUBLIC PROVIDER.—The term ‘public pro-
vider’ means a State or political subdivision thereof,
any agency, authority, or instrumentality of a State
or political subdivision thereof, or an Indian tribe
(as defined in section 4(e) of the Indian Self-Deter-
mination and Education Assistance Act (25 U.S.C.
450b(e)), that provides advanced telecommunications capability, or any service that utilizes such advanced telecommunications capability, to any person or public or private entity.’’.

SEC. 303. FEDERAL INFORMATION AND COMMUNICATIONS TECHNOLOGY RESEARCH.

(a) ADVANCED INFORMATION AND COMMUNICATIONS TECHNOLOGY RESEARCH.—

(1) NATIONAL SCIENCE FOUNDATION INFORMATION AND COMMUNICATIONS TECHNOLOGY RESEARCH.—The Director of the National Science Foundation shall establish a program of basic research in advanced information and communications technologies focused on enhancing or facilitating the availability and affordability of advanced communications services to all Americans. In developing and carrying out the program, the Director shall consult with the Board established under paragraph (2).

(2) FEDERAL ADVANCED INFORMATION AND COMMUNICATIONS TECHNOLOGY RESEARCH BOARD.—There is established within the National Science Foundation a Federal Advanced Information and Communications Technology Board which shall advise the Director of the National Science Founda-
tion in carrying out the program authorized by para-
graph (1). The Board Shall be composed of individ-
uals with expertise in information and communica-
tions technologies, including representatives from the
National Telecommunications and Information Ad-
ministration, the Federal Communications Commis-
sion, the National Institute of Standards and Tech-
nology, and the Department of Defense.

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

(A) affordable broadband access, including
wireless technologies;

(B) network security and reliability;

(C) communications interoperability;

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

(E) trusted software;

(F) privacy;
(G) nanoelectronics for communications applications;
(H) low-power communications electronics;
and
(I) such other related areas as the Director, in consultation with the Board, finds appropriate.

(4) CENTERS.—The Director shall award multiyear grants, subject to the availability of appropriations, to institutions of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), nonprofit research institutions, or consortia thereof to establish multidisciplinary Centers for Communications Research. The purpose of the Centers shall be to generate innovative approaches to problems in communications and information technology research, including the research areas described in paragraph (3). Institutions of higher education nonprofit research, institutions, or consortia receiving such grants may partner with 1 or more government laboratories or for-profit institutions, or other institutions of higher education or nonprofit research institutions.

(5) APPLICATIONS.—The Director, in consultation with the Board, shall establish criteria for the
award of grants under paragraphs (3) and (4). Grants shall be awarded under the program on a merit-reviewed competitive basis. The Director shall give priority to grants that offer the potential for revolutionary rather than evolutionary breakthroughs.

(6) Authorization of Appropriations.—

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $40,000,000 for fiscal year 2007;
(B) $45,000,000 for fiscal year 2008;
(C) $50,000,000 for fiscal year 2009;
(D) $55,000,000 for fiscal year 2010; and
(E) $60,000,000 for fiscal year 2011.

(b) Spectrum-sharing Innovation Testbed.—

(1) Spectrum-sharing Plan.—Within 1 year after the date of enactment of this Act, the Federal Communications Commission and the Assistant Secretary of Commerce for Communications and Information, in coordination with other Federal agencies, shall—

(A) develop a plan to increase sharing of spectrum between Federal and non-Federal government users; and
(B) establish a pilot program for implementation of the plan.

(2) TECHNICAL SPECIFICATIONS.—The Commission and the Assistant Secretary—

(A) shall each identify a segment of spectrum of equal bandwidth within their respective jurisdiction for the pilot program that is approximately 10 megaHertz in width for assignment on a shared basis to Federal and non-Federal government use; and

(B) may take the spectrum for the pilot program from bands currently allocated on either an exclusive or shared basis.

(3) REPORT.—The Commission and the Assistant Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce 2 years after the inception of the pilot program describing the results of the program and suggesting appropriate procedures for expanding the program as appropriate.

(c) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY RESPONSIBILITIES.—The Director of the National Institute of Standards and Technology shall contiue to support research and support standards develop-
ment in advanced information and communications technologies focused on enhancing or facilitating the availability and affordability of advanced communications services to all Americans, in order to implement the Institute’s responsibilities under section 2(c)(12) of the National Institute of Standards and Technology Act (15 U.S.C. 272(c)(12)). The Director shall support intramural research and cooperative research with institutions of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) and industry.

SEC. 304. COMMUNITY BROADBAND GRANTS FOR UNSERVED AREAS AND UNDERSERVED COMMUNITIES.

(a) IN GENERAL.—The Secretary of Commerce shall establish a grant program to extend and expand the availability, affordability, and use of broadband service in unserved areas and underserved communities.

(b) IMPLEMENTATION.—

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

(A) guidelines for determining which areas may be considered to be unserved areas and which communities or groups may be considered to be underserved communities for purposes of this section;
(B) criteria for determining which facilities-based providers of broadband communications service, and which projects, are eligible for support from the account;

(C) procedural guidelines for awarding assistance from the account on a merit-based and competitive basis;

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

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

(2) STUDY AND ANNUAL REPORTS ON UNSERVED AREAS AND UNDERSERVED COMMUNITIES.—

(A) UNSERVED AREAS.—Within 6 months after the date of enactment of this Act, the Secretary shall conduct a study to determine which areas of the United States may be considered to be unserved areas for purposes of this section. For purposes of the study and for purposes of the guidelines to be established under subsection (a)(1), the availability of broadband
communications services by satellite in an area shall not preclude designation of that area as unserved if the Secretary determines that subscribership to the service in that area is de minimis.

(B) UNDERSERVED COMMUNITIES.—Within 6 months after the date of enactment of this Act, the Secretary shall conduct a study to determine which communities or groups of the United States may be considered to be underserved communities for purposes of this section. In establishing guidelines for determining which communities or groups may be considered to be underserved communities or groups for purposes of this section, the Secretary shall, at a minimum, include communities or groups in which broadband penetration is at least 50 percent below the national average.

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

(D) REPORT.—The Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce setting forth the findings and
conclusions of the Secretary for the study and each update under this paragraph and making recommendations for an increase or decrease, if necessary, in the amounts credited to the account under this section.

(c) Administrative Provisions.—

(1) In General.—Upon approving an application under this section with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project or grant. The Secretary shall pay such amount from the sums available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

(2) Maximum Funding Period.—The funding of any project or grant under this section shall continue for not more than 3 years from the date of the original grant or contract.

(3) Annual Summary and Evaluation Required.—The Secretary shall require that the recipient of a grant or contract under this section submit a summary and evaluation of the results of the
project at least annually for each year in which funds are received under this section.

(4) BOOKS AND RECORDS.—Each recipient of assistance under this section shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary’s functions under this section, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(5) AUDIT AND EXAMINATION.—The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this section.

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

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

(g) Authorization of Appropriations.—There are authorized to be appropriated $500,000,000 for each of the fiscal years 2008, 2009, and 2010, to be used by the Secretary to carry out the provisions of this section. Sums appropriated under this subsection for any fiscal year shall remain available for payment of grants or contracts for projects for which applications approved under this section have been submitted within one year after the last day of such fiscal year.

SEC. 305. DIRECT FCC TO REVISIT BROADBAND SPEEDS.

Within 90 days after the date of enactment of this Act and biennially thereafter, the Federal Communications Commission shall revise its definition of broadband to reflect a data rate—

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

(2) consistent with data rates for broadband communications services generally available to the public on the date of enactment of this Act and thereafter, upon the date of the Commission’s review.
SEC. 306. DIRECT CENSUS TO INCLUDE QUESTION AS PART OF ITS AMERICAN COMMUNITY SURVEY.

The Secretary of Commerce, in consultation with the Federal Communications Commission, shall expand the American Community Survey conducted by the Bureau of the Census to elicit information for residential households, including those located on native lands, as to what technology such households use to access the Internet from home.

TITLE IV—REFORM AND STRENGTHEN USF

SEC. 401. UNIVERSAL SERVICE FUND CONTRIBUTION REQUIREMENTS.

(a) Inclusion of Intrastate Revenues.—Section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d)) is amended—

(1) by striking “Every” and inserting “Notwithstanding section 2(b) of this Act, a”;

(2) by striking “interstate” each place it appears; and

(b) State USF Contributions.—Section 254(f) of the Communications Act of 1934 (47 U.S.F. 254(f) is amended—

(1) by striking “telecommunications carrier that provides intrastate telecommunications” and insert-
ing “provider of telecommunications or telecommunications services”; 

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

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

(c) UNIVERSAL SERVICE PROCEEDING.—

(1) PROCEEDING.—The Federal Communications Commission shall initiate a proceeding, or take action pursuant to any proceeding on universal service existing on the date of enactment of this Act, to establish a permanent mechanism to support universal service, that will preserve and enhance the long term financial stability of universal service, and will promote the public interest.

(2) CRITERIA.—In establishing such a permanent mechanism, the Commission—

(A) shall exercise its authority under the last sentence of section 254(d) of the Commu-
communications Act of 1934 as necessary to ensure contributions by providers of broadband services as defined in section 715(b)(1) of the Communications Act of 1934 and of IP-enabled voice services as defined in section 715(b)(3) of the Communications Act of 1934; and

(B) may include collection methodologies such as total telecommunications revenues, the assignment of telephone numbers and any successor identifier, connections (which could include carriers with a retail connection to a customer), and any combination thereof if the methodology—

(i) promotes competitive neutrality among providers and technologies;

(ii) ensures that such methodology results in a proportionately reduced burden for low-volume residential customers and customers of in-vehicle emergency communications services; and

(iii) ensures that a carrier is not required to contribute more than once for the same transaction, activity, or service.

(3) DEADLINE.—The Commission shall complete the proceeding and issue a final rule not more
than 6 months after the date of enactment of this Act.

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

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

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

(a) IN GENERAL.—Section 254(g) of the Communications Act of 1934 (47 U.S.C. 254(g) is amended by inserting “This section shall also apply to any services within the jurisdiction of the Commission that can be used as effective substitutes for interexchange telecommunications services, including any such substitute classified as an information service that uses telecommunications.” after “State.”).
SEC. 403. PHANTOM TRAFFIC.

Section 254 of the Communications Act of 1934 (47 U.S.C. 254) is amended by adding at the end the following:

“(m) NETWORK TRAFFIC IDENTIFICATION ACCOUNTABILITY STANDARDS.—

“(1) NETWORK TRAFFIC IDENTIFICATION STANDARDS.—An provider of voice communications services (including an IP-enabled voice service provider) shall ensure that all traffic that originates on its network contains sufficient information to allow for traffic identification by other communications service providers that transport, transit, or terminate such traffic, including information on the identity of the originating provider, the calling and called parties, and such other information as the Commission deems appropriate.

“(2) NETWORK TRAFFIC IDENTIFICATION RULEMAKING.—The Commission, in consultation with the States, shall initiate a single rulemaking no later than 180 days after the date of enactment of the Consumer Competition and Broadband Promotion Act to establish rules and enforcement provisions for traffic identification.

“(3) NETWORK TRAFFIC IDENTIFICATION ENFORCEMENT.—The Commission shall adopt clear
penalties, fines, and sanctions for insufficiently la-
beled traffic.”.

SEC. 404. PERMANENT EXTENSION OF ADA EXEMPTION.

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

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

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

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

SEC. 405. INTERCARRIER COMPENSATION.

(a) JURISDICTION.—Notwithstanding section 2(b) of
the Communications Act of 1934 (47 U.S.C. 152(b)), the
Federal Communications Commission shall have exclusive
jurisdiction to establish rates for inter-carrier compensa-
tion payments and shall establish rules providing a com-
prehensive, unified system of inter-carrier compensation,
including compensation for the origination and termination of intrastate telecommunications traffic.

(b) CRITERIA.—In establishing these rules, and in conjunction with its action in its universal service proceeding under section 401(c), the Commission, in consultation with the Federal-State Joint Board on Universal Service, shall—

(1) ensure that the costs associated with the provision of interstate and intrastate telecommunications services are fully recoverable;

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

(3) to the greatest extent possible, minimize opportunities for arbitrage; and

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

(c) SUFFICIENT SUPPORT.—The Commission should, to the greatest extent possible, ensure that as a result of its universal service and inter-carrier compensation proceedings, the aggregate amount of universal service support and inter-carrier compensation provided to local exchange carriers with fewer than 2 percent of the Nation’s subscriber lines will be sufficient to meet the just and reasonable costs of such local exchange carriers.
(d) NEGOTIATED AGREEMENTS.—Nothing in this section precludes carriers from negotiating their own inter-carrier compensation agreements.

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

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

(a) PRIMARY LINE.—Section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)) is amended by adding at the end the following:

“(7) PRIMARY LINE.—In implementing the requirements of this Act with respect to the distribution and use of Federal universal service support the Commission shall not limit such distribution and use to a single connection or primary line, and all residential and business lines served by an eligible telecommunications carrier shall be eligible for Federal universal service support.”.

(b) DESIGNATION.—Section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)), as amended by subsection (a), is further amended by adding at the end the following:
“(8) CONDITIONS FOR DESIGNATION.—

“(A) IN GENERAL.—A common carrier may not be designated as an eligible telecommunications carrier under this subsection unless the State commission or the Commission, as applicable, determines that the carrier—

“(i) is committed to providing service throughout its proposed designated service area, using its own facilities or a combination of facilities and resale of another carrier’s facilities, to all customers making a reasonable request for service;

“(ii) has certified to the State commission or the Commission that it will provide service on a timely basis to requesting customers within its service area, if service can be provided at reasonable cost;

“(iii) has submitted a plan to the State commission or the Commission that describes with specificity proposed improvements or upgrades to its network that will be accomplished with high-cost support over the first 2 years following its designation as an eligible telecommunications carrier;
“(iv) has demonstrated to the State commission or the Commission its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations;

“(v) is committed to following applicable consumer protection and service quality standards; and

“(vi) has complied with annual reporting requirements established by the Commission or by State Commissions for all carriers receiving universal service support to ensure that such support is used for the provision, maintenance, and upgrading of the facilities for which support is intended.

“(9) BROADBAND SERVICE REQUIREMENT.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), an eligible telecommunications carrier may not receive universal service support under section 254 more than 60 months after
the date of enactment of the Consumer Competition and Broadband Promotion Act if it has not deployed broadband service (as defined in section 715(b)(1)) within its service area before the end of that 60-month period unless it receives a waiver under subparagraph (B).

“(B) WAIVERS.—

“(i) APPLICATION.—In order to receive a waiver under this subparagraph, an eligible telecommunications carrier shall submit an application to the Commission.

“(ii) COST OF DEPLOYMENT.—If an eligible telecommunications carrier demonstrates to the satisfaction of the Commission that the cost per line of deploying such broadband service is at least 3 times the average cost per line of deploying such broadband service for all eligible telecommunications carriers receiving universal service support, the Commission shall waive the application of subparagraph (A) to that eligible telecommunications carrier.

“(iii) OTHER FACTORS.—If an eligible telecommunications carrier demonstrates
to the satisfaction of the Commission that
the deployment and provision of such
broadband service is not technically fea-
sible or would materially impair the car-
rier’s ability to continue to provide services
supported under section 254(c) or
broadband service throughout its service
area, the Commission may waive the appli-
cation of subparagraph (A) to that eligible
telecommunications carrier.

“(iv) DEEMED APPROVAL.—If the
Commission fails to act on a waiver re-
quest within 60 calendar days after it re-
ceives a completed application for the waive-
er, the waiver shall be deemed to be grant-
ed. If the Commission requests additional
information from the eligible telecommuni-
cations carrier, the 60-day period shall be
tolled beginning on the date on which re-
quest is received by the carrier and ending
on the date on which the Commission re-
ceives the information requested.

“(v) TERM; RENEWAL.—A waiver
under this subparagraph—
“(I) shall be for a period of not more than 2 years; and

“(II) may be renewed, upon application, by the Commission if the applicant demonstrates that it is eligible for a waiver under clause (ii) or (iii).

“(C) Notification of State Commission.—Whenever the Commission grants a waiver to an eligible telecommunications carrier under subparagraph (B) that has been designated under paragraph (2) by a State commission, the Commission shall notify the State commission of the waiver.”.

SEC. 407. RURAL HEALTH CARE SUPPORT MECHANISMS.

(a) Rural Health Care Support Mechanisms.—

(1) Amendment.—Subparagraph (A) of section 254(h)(1) of the Communications Act of 1934 (47 U.S.C. 254(h)(1)) is amended to read as follows:

“(A) Health care services for rural areas.—Within 180 days after the date of enactment of the Consumer Competition and Broadband Promotion Act, the Commission shall prescribe regulations that provide that a communications service provider shall, upon re-
ceiving a bona fide request, provide covered
services which are necessary for the provision of
health care services in a State, including in-
struction relating to such services, to any public
or nonprofit health care provider that serves
persons who reside in rural areas in that State
at rates that are reasonably comparable to rates
charged for similar services in urban areas in
that State. A communications service provider
providing service under this subparagraph shall
be entitled to have an amount equal to the dif-
ference, if any, between the rates for services
provided to health care providers for rural areas
in a State and the rates for similar services in
urban areas in that State treated as a service
obligation as a part of its obligation to partici-
pate in the mechanisms to preserve and ad-
ance universal service.”.

(2) Definition of health care pro-
vider.—Subparagraph (B) of section 254(h)(7) of
such Act (47 U.S.C. 254(h)(7)(B)) is amended to
read as follows:

“(B) Health care provider.—The term
‘health care provider’ means—
“(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

“(ii) community health centers or health centers providing health care to migrants;

“(iii) local health departments or agencies;

“(iv) community mental health centers;

“(v) not-for-profit hospitals;

“(vi) critical access hospitals;

“(vii) rural hospitals with emergency rooms;

“(viii) rural health clinics;

“(ix) not-for-profit nursing homes or skilled nursing homes;

“(x) hospice providers;

“(xi) emergency medical services facilities;

“(xii) rural dialysis facilities;

“(xiii) elementary, secondary, and post-secondary school health clinics; and
“(xiv) consortia of health care providers consisting of one or more entities described in clauses (i) through (xiii).”.

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

“(J) RURAL AREA.—Within 180 days after the date of enactment of the Consumer Protection and Broadband Promotion Act, the Commission shall prescribe regulations that provide that, for purposes of the rural health care universal service support mechanisms established pursuant to this subsection, a ‘rural area’ is—

“(i) any incorporated or unincorporated place in the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau) that has no more than 20,000 inhabitants based on the most recent available population statistics from the Census Bureau;

“(ii) any area located outside of the boundaries of any incorporated or unincor-
porated city, village, or borough having a population exceeding 20,000;

“(iii) any area with a population density of fewer than 250 persons per square mile; or

“(iv) any place that qualified as a ‘rural area’ and received support from the rural health care support mechanism pursuant to the Commission’s rules in effect prior to December 1, 2004, and that continues to qualify as a ‘rural area’ pursuant to such rules.”

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

(1) nothing in this Act (or the amendments made by this Act) shall be construed as limiting, changing, modifying, or altering the amount of support or means of distribution for the schools, libraries, rural health care, life-line, link-up, and toll limitation programs; and
(2) the Federal Communications Commission
shall ensure that such amendments do not result in
a decrease of such support to a level below the level
for the fiscal year preceding the fiscal year in which
this Act is enacted.

SEC. 408. TELECOMMUNICATIONS SERVICES FOR LIBRARIES.

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

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

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

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

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

“(D) A library or library consortium not
eligible for assistance funded by a grant under
section 261 of the Library Services and Tech-
nology Act (20 U.S.C. 9161) from an Indian
tribe or other organization.”.

SEC. 409. AUDITS.

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

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

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

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

(2) not later than 180 days after the date of
enactment of this Act, establish rules identifying ap-
propriate fiscal controls and accountability standards
that shall be applied to all Federal universal support programs.