[STAFF WORKING DRAFT]
MAY 1, 2006

109TH CONGRESS
2ND SESSION

S. ——

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

IN THE SENATE OF THE UNITED STATES
MAY ——, 2006

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

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

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

SECTION 1. SHORT TITLE.
This Act may be cited as the “Communications, Con-
sumer’s Choice, and Broadband Deployment Act of
2006”.

May 1, 2006 (12:47 p.m.)
SEC. 2. AMENDMENT OF COMMUNICATIONS ACT OF 1934.

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

SEC. 3. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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

TITLE I—WAR ON TERRORISM

SUBTITLE A—CALL HOME

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

SUBTITLE B—INTEROPERABILITY

Sec. 151. Interoperable emergency communications.

TITLE II—UNIVERSAL SERVICE REFORM; INTERCONNECTION

Sec. 201. Short title.

SUBTITLE A—CONTRIBUTIONS TO UNIVERSAL SERVICE

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

SUBTITLE B—DISTRIBUTIONS FROM UNIVERSAL SERVICE

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

TITLE III—STREAMLINING FRANCHISING PROCESS

Sec. 301. Short title.
SUBTITLE A—UPDATING THE 1934 ACT AND LEVELING THE REGULATORY PLAYING FIELD

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

SUBTITLE B—STREAMLINING THE PROVISION OF VIDEO SERVICES

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

SUBTITLE C—MISCELLANEOUS AND CONFORMING AMENDMENTS

Sec. 351. Miscellaneous amendments.

SUBTITLE D—EFFECTIVE DATES AND TRANSITION RULES.

Sec. 381. Effective dates; phase-in.

TITLE IV—VIDEO CONTENT

Sec. 401. Short title.

SUBTITLE A—SPORTS FREEDOM

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

SUBTITLE B—NATIONAL SATELLITE

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

SUBTITLE C—VIDEO AND AUDIO FLAG

Sec. 452. Digital video broadcasting.
Sec. 453. Digital audio broadcasting.
Sec. 454. Digital Audio Review Board.

TITLE V—MUNICIPAL BROADBAND

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

TITLE VI—WIRELESS INNOVATION NETWORKS

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

TITLE VII—DIGITAL TELEVISION
Sec. 701. Analog and digital television sets and converter boxes; consumer education and requirements to reduce the government cost of the converter box program.
Sec. 702. Digital stream requirement for the blind.
Sec. 703. Status of international coordination.

TITLE VIII—PROTECTING CHILDREN

Sec. 801. Video transmission of child pornography.

TITLE IX—INTERNET NEUTRALITY

Sec. 901. Neutral networks for consumers.

TITLE X—MISCELLANEOUS

Sec. 1001. Commissioner participation in forums and meetings.
Sec. 1002. Severability.

TITLE I—WAR ON TERRORISM

Subtitle A—Call Home

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

(a) In General.—The Federal Communications Commission shall take such action as may be necessary to reduce the cost of calling home for Armed Forces personnel who are stationed outside the United States under official military orders or deployed outside the United States in support of military operations, training exercises, or other purposes as approved by the Secretary of Defense, including the reduction of such costs through the waiver of government fees, assessments, or other charges for such calls. The Commission may not regulate rates in order to carry out this section.

(b) Factors to Consider.—In taking the action described in subsection (a), the Commission, in coordina-
tion with the Department of Defense and the Department of State, shall—

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

(2) evaluate methods of reducing the rates imposed on such calls, including deployment of new technology such as voice over Internet protocol or other Internet protocol technology;

(3) encourage telecommunications carriers (as defined in section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44))) to adopt flexible billing procedures and policies for Armed Forces personnel and their dependents for telephone calls to and from such Armed Forces personnel; and

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

(c) DEFINITIONS.—In this section:

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

(2) MILITARY BASE.—The term “military base” includes official duty stations to include vessels,
whether such vessels are in port or underway outside of the United States.

SEC. 102. REPEAL OF EXISTING AUTHORIZATION.


Subtitle B—Interoperability

SEC. 151. INTEROPERABLE EMERGENCY COMMUNICATIONS.

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

“(d) INTEROPERABLE COMMUNICATIONS SYSTEM EQUIPMENT DEPLOYMENT.—

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

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

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

“(B) A majority to be distributed to the States based on the threat and risk factors used
by the Secretary of Homeland Security for the purposes of allocating discretionary grants under the heading “OFFICE FOR DOMESTIC PREPAREDNESS, STATE AND LOCAL PROGRAMS” in the Department of Homeland Security Appropriations Act, 2006.

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

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

“(e) COORDINATION AND PLANNING GRANT INITIATIVE.—

“(1) IN GENERAL.—The Assistant Secretary, in consultation with the Secretary of Homeland Security, shall allocate a portion of the funds made available to carry out this section for emergency communication and coordination planning grants. The grants shall supplement, and be in addition to, any
Federal funds otherwise made available by grant or otherwise to the States for emergency planning.

“(2) ALLOCATION.—The Secretary shall allocate funds under this subsection as follows:

“(A) A portion shall be equally distributed to each State for use by State and local governments; and

“(B) A majority shall be distributed to the States based on the threat and risk factors used by the Secretary of Homeland Security for the purposes of allocating discretionary grants under the heading “OFFICE FOR DOMESTIC PREPAREDNESS, STATE AND LOCAL PROGRAMS” in the Department of Homeland Security Appropriations Act, 2006.

“(3) COORDINATION AND PLANNING GUIDELINES.—Except as provided in paragraph (4), a State shall use its emergency communication coordination and planning grant to establish a statewide plan consistent with the State communications interoperability planning methodology developed by the SAFECOM program within the Department of Homeland Security or a regional plan established pursuant to a regional planning agency consistent with this section. In establishing the plan, the Gov-
error or the Governor’s designee shall consult with the Secretary of Homeland Security or the Secretary’s designee. A State shall submit its statewide plan to the Public Safety and Homeland Security Bureau of the Federal Communications Commission for approval and the Secretary of Homeland Security for approval.

“(f) STRATEGIC TECHNOLOGY RESERVES INITIATIVE.—

“(1) IN GENERAL.—The Assistant Secretary, in consultation with the Secretary of Homeland Security, shall allocate a portion the funds made available to carry out this section to establish and implement a strategic technology reserve to pre-position or secure communications equipment in advance for immediate deployment in an emergency or major disaster (as defined in section 102(2) of Public Law 93-288 (42 U.S.C. 5122)).

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

“(A) be capable of re-establishing communications when existing infrastructure is damaged or destroyed in a major disaster or other event; and
“(B) include appropriate current, widely-used equipment, such as Land Mobile Radio Systems, cellular and satellite telephones, Cells On Wheels, Cells On Light Trucks, backup batteries, generators, fuel, and computers.

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

“(4) CONSULTATION.—In developing the reserve, the Secretary shall seek advice from the Secretary of Defense and the Secretary of Homeland Security, as well as from communications providers, first responders, emergency managers, and State, local, and tribal governments.

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

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

“(B) a portion of the reserve’s funds for regional Federal strategic technology reserves to facilitate any Federal response when necessary, to be held in secure locations around the
country for immediate deployment to every region of the country including remote areas and noncontiguous States.

“(g) COMMON STANDARDS; APPLICATIONS.

“(1) COMMON STANDARDS.—In carrying out this section, the Assistant Secretary, in cooperation with the Secretary of Homeland Security shall develop and implement common standards to the greatest extent practicable.

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

“(A) a detailed explanation of how assistance received under the program would be used to improve local communications interoperability and ensure interoperability with other appropriate Federal, State, local, tribal, and regional agencies in a regional or national emergency; and

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

“(i) not be incompatible with the communications architecture developed under
section 7303(a)(1)(E) of the Intelligence Reform Act of 2004;

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

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

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

TITLE II—UNIVERSAL SERVICE REFORM; INTERCONNECTION

SEC. 201. SHORT TITLE.

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

Subtitle A—Contributions to Universal Service

SEC. 211. STABILIZATION OF UNIVERSAL SERVICE FUNDING.

(a) ENSURING AN EQUIitable CONTRIBUTion BASE FOR Universal SERVICE.—
Section 254(d) (47 U.S.C. 254(d)) is amended to read as follows:

‘(d) Universal Service Support Contributions.—

“(1) Contribution Mechanism.—

“(A) In General.—Each communications service provider shall contribute as provided in this subsection to support universal service.

“(B) Requirements.—The Commission shall ensure that the contributions required by this subsection are—

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

“(ii) specific, predictable, and sufficient to sustain the funding of networks used to preserve and advance universal service.

“(C) Adjustments.—The Commission may adjust the contribution for providers for their low volume residential customers.

“(2) Exemptions.—The Commission may exempt a communications service provider or any class of communications service providers from the requirements of this subsection—
“(A) if the services of such a provider are limited to such an extent that the level of its contributions would be de minimis; or

“(B) with respect to communications service provided pursuant to the Commission’s Lifeline Assistance Program.

“(3) CONTRIBUTION ASSESSMENT FLEXIBILITY.—

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

“(i) revenue from communications service;

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

“(iii) network capacity.

“(B) USE OF MORE THAN 1 METHODOLOGY.—If no single methodology employed under subparagraph (A) achieves the principles described in this subsection, the Commission may employ a combination of any such methodologies.

“(C) REMOVAL OF INTERSTATE/INTRA-STATE DISTINCTION.—For the purpose of uni-
versal service contributions, the Commission may assess the interstate, intrastate, or international portions of communications service.

“(D) GROUP PLAN DISCOUNT.—If the Commission utilizes a methodology under subparagraph (A) based in whole or in part on working phone numbers, it may provide a discount for up to 3 additional phones provided under a group or family pricing plan.

“(E) PRESERVATION OF UNIVERSAL SERVICE FUNDS.—Nothing in this subsection precludes a State from establishing or maintaining State universal service pursuant to subsection (f).

“(4) NON-DISCRIMINATORY ELIGIBILITY REQUIREMENT.—A communications service provider is not exempted from the requirements of this subsection solely on the basis that such provider is not eligible to receive support under this section.

“(6) BILLING.—

“(A) IN GENERAL.—A communications service provider that contributes to universal service under this section may place on any customer bill a separate line item charge that does not exceed the amount for the customer that
the provider is required to contribute under this subsection that shall be identified as the ‘Federal Universal Service Fee’.

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

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

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

“(7) DEFINITIONS.—In this subsection:

“(A) BROADBAND SERVICE.—The term ‘broadband service’ means any service used for transmission of information of a user’s choosing with a transmission speed of at least 200 kilobits per second in at least 1 direction, regardless of the transmission medium or technology employed, that connects to the public Internet for a fee directly—

“(i) to the public; or
“(ii) to such classes of users as to be effectively available directly to the public.

“(B) COMMUNICATIONS SERVICE.—The term ‘communications service’ means telecommunications service, broadband service, or IP-enabled voice service (whether offered separately or as part of a bundle of services).

“(C) IP-ENABLED VOICE SERVICE.—The term ‘IP-enabled voice service’ means the provision of real-time 2-way voice communications offered to the public, or such classes of users as to be effectively available to the public, transmitted through customer premises equipment using TCP/IP protocol, or a successor protocol, for a fee (whether part of a bundle of services or separately) with 2-way interconnection capability such that the service can originate traffic to, and terminate traffic from, the public switched telephone network.”.

(2) CONFORMING AMENDMENT.—Section 254(b)(4) (47 U.S.C. 254(b)(4)) is amended by striking “telecommunications services” and inserting “communications services (as defined in subsection (d)(7)(B))."
(b) PROPER ACCOUNTING OF UNIVERSAL SERVICE CONTRIBUTIONS.—

(1) FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of universal service under section 254 of the Communications Act of 1934 (47 U.S.C. 254) shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(A) the budget of the United States Government as submitted by the President;

(B) the Congressional budget;

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

(D) any other statute requiring budget sequesters.

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

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

(B) disbursements or other obligations authorized by the Commission under section 254

(c) Financial Management.—The Federal Communications Commission and the Administrator of the Universal Service Fund—

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

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

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

(d) Rulemaking.—Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall issue a rule to implement section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d)) as amended by subsection (a).

SEC. 212. TELECOMMUNICATIONS SERVICES FOR LIBRARIES.

(a) In General.—Section 254(h)(4) (47 U.S.C. 254(h)(4)) is amended to read as follows:
“(4) Certain users not eligible.—Notwithstanding any other provision of this subsection, the following entities are not entitled to preferential rates or treatment as required by this subsection:

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

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

“(C) A library or library consortium not eligible for assistance under the Library Services and Technology Act (20 U.S.C. 9101 et seq.)—

“(i) from a State library administrative agency; or

“(ii) funded by a grant under section 261 of the Library Services and Technology Act (20 U.S.C. 9161) from an Indian tribe or other organization.”.

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

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

“(i) the annual program funding cap established by the Commission; and
“(ii) any unobligated balances from prior funding years.”.

(c) American Community Survey Residential Internet Access Question.—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.

SEC. 213. MODIFICATION OF RURAL VIDEO SERVICE EXEMPTION.

(a) Rural Telephone Companies.—Section 251(f)(1) (47 U.S.C. 251(f)(1)) is amended—

(1) by striking “Subsection” in subparagraph (A) and inserting “Except as provided in subparagraph (B), subsection”;

(2) by striking “interconnection, services, or network elements,” in subparagraph (A) and inserting “services or network elements,”;

(3) by striking “(under subparagraph (B))” in subparagraph (A) and inserting “(under subparagraph (C))”;

(4) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D);
(5) by inserting after subparagraph (A) the following:

“(B) INTERCONNECTION.—Notwithstanding subparagraph (A), subsection (c)(2) of this section shall not apply to a rural telephone company until such company has received a bona fide request for interconnection.”;

(6) by striking “exemption under subparagraph (A).” in subparagraph (C), as redesignated, and inserting “exemption.”; and

(7) by striking subparagraph (D) as redesignated.

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

SEC. 214. INTERCONNECTION.

Title VII (47 U.S.C. 601 et seq.) is amended by adding after section 714 the following new section:

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

“(a) IN GENERAL.—An IP-enabled voice service provider shall have the same rights, duties, and obligations as a requesting telecommunications carrier under sections 251 and 252, if the provider elects to assert such rights.
“(b) DISABLED SERVICES.—An IP-enabled voice service provider shall have the same rights, duties, and obligations as a telecommunications carrier under sections 225, 255, and 710. In revising the Commission’s regulations under such sections to carry out this subsection, the Commission shall consider whether a service or equipment is marketed as a substitute for telecommunications service, telecommunications equipment, customer premises equipment, or telecommunications relay services.

“(c) IP-ENABLED VOICE SERVICE DEFINED.—In this section, 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 TCP/IP protocol, or a successor protocol, for a fee (whether part of a bundle of services or separately) with interconnection capability such that the service can originate traffic to, or terminate traffic from, the public switched telephone network.”.

Subtitle B—Distributions from Universal Service

SEC. 251. BROADBAND REQUIREMENT.

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

“(7) BROADBAND SERVICE REQUIREMENT.—
“(A) IN GENERAL.—Notwithstanding paragraph (1), an eligible communications carrier may not receive universal service support under section 254 more than 60 months after the date of enactment of the Internet and Universal Service Act of 2006 if it has not deployed broadband service 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 communications carrier shall submit an application to the Commission.

“(ii) COST OF DEPLOYMENT.—If an eligible communications 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 communications carriers receiving universal service support, the Commission shall waive the application of subparagraph (A) to that eligible communications carrier.
“(iii) OTHER FACTORS.—If an eligible communications carrier demonstrates to the satisfaction of the Commission that the deployment and provision of such broadband service is not technically feasible or would materially impair the carrier’s ability to continue to provide local exchange service or broadband service throughout its service area, the Commission may waive the application of subparagraph (A) to that eligible communications carrier.

“(iv) DEEMED APPROVAL.—If the Commission fails to act on a waiver request within 60 calendar days after it receives a completed application for the waiver, the waiver shall be deemed to be granted. If the Commission requests additional information from the eligible communications carrier, the 60-day period shall be tolled beginning on the date on which request is received by the carrier and ending on the date on which the Commission receives 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 communications 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.

“(D) Definitions.—In this paragraph:

“(i) Broadband service.—The term ‘broadband service’ means any service used for transmission of information of a user’s choosing with a transmission speed of at least 3 megabits per second in at least 1 direction, regardless of the transmission medium or technology employed, that con-
nects to the public Internet for a fee directly—

“(I) to the public; or

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

“(ii) Eligible communications carrier.—The term ‘eligible communications carrier’ means an entity designated under paragraph (2), (3), or (6). Any reference to ‘eligible telecommunications carrier’ in this section is deemed also to refer to ‘eligible communications carrier’.”.

SEC. 252. ESTABLISHMENT OF BROADBAND ACCOUNT WITHIN UNIVERSAL SERVICE FUND.

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

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

“(a) Account Established.—

“(1) In general.—There shall be, within the universal service fund established pursuant to section 254, a separate account to be known as the ‘Broadband for Unserved Areas Account’.

“(2) Purpose.—The purpose of the Account is to provide financial assistance for the deployment of
broadband service to unserved areas throughout the United States.

“(b) IMPLEMENTATION.—

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

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

“(B) criteria for determining which facilities-based providers of broadband 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 an equitable basis.

“(2) SATELLITE SERVICE.—
“(A) Eligibility of Provider.—A satellite service provider shall be considered to be a facility-based provider eligible for support from the Account.

“(B) Eligibility of CPE Projects.—The deployment of satellite customer premises equipment may be considered to be a project eligible for support from the Account.

“(C) Designation of Lightly Served Areas.—The availability of broadband service by satellite in an area shall not preclude the designation of that area as an unserved area if the Commission determines that subscribership to satellite service in the area is de minimis.

“(D) Multiple Areas within State.—For purposes of this section, there may be more than 1 unserved area within a State.

“(3) Report.—The Commission shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce making recommendations for an increase or decrease, if necessary, in the amounts credited to the account under this section.

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

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

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

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

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

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

“(1) SECTION 214(e).—Section 214(e) shall not apply to the Broadband for Unserved Areas Account.

“(2) SECTION 254.—Section 254 shall be applied to the Broadband for Unserved Areas Account—

“(A) by disregarding—
“(i) subsections (a) and (e) thereof; and
“(ii) any other provision thereof determined by the Commission to be inappropriate or inapplicable to implementation of this section; and
“(B) by reconciling, to the maximum extent feasible and in accordance with guidelines prescribed by the Commission, the implementation of this section with the provisions of subsections (h) and (l) thereof.
“(3) SECTION 410.—Section 410 shall not apply to the Broadband for Unserved Areas Account.
“(e) BROADBAND SERVICE DEFINED.—
“(1) IN GENERAL.—In this section, except to the extent revised by the Commission under paragraph (2), the term ‘broadband service’ means any service used for transmission of information of a user’s choosing with a transmission speed of at least 500 kilobits per second in at least 1 direction, regardless of the transmission medium or technology employed, that connects to the public Internet for a fee directly—
“(A) to the public; or
“(B) to such classes of users as to be effectively available directly to the public.

“(2) ANNUAL REVIEW OF TRANSMISSION SPEED.—The Commission shall review the transmission speed component of the definition in subparagraph (A) no less frequently than once each year and revise that component as appropriate.”.

SEC. 253. ELIGIBILITY GUIDELINES.

Section 214(e) (47 U.S.C. 214(e)), as amended by section 251, is amended by adding at the end the following:

“(8) ELIGIBILITY GUIDELINES.—A common carrier may not be designated as an eligible communications carrier (as defined in paragraph (7)(D)(ii)) subsection unless it—

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

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

“(C) demonstrates that it will satisfy consumer protection and service quality standards;
“(D) offers local usage plans comparable to those offered by the incumbent local exchange carrier in the areas for which it seeks designation; and

“(E) acknowledges that it may be required to provide equal access if all other eligible telecommunications carriers in the designated service area relinquish their designations pursuant to paragraph (4) of this subsection.”.

SEC. 254. PRIMARY LINE.

Section 214(e) (47 U.S.C. 214(e)), as amended by section 253, is amended by adding at the end the following:

“(9) 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.”.

SEC. 255. PHANTOM TRAFFIC.

Section 254 (47 U.S.C. 254) is amended by adding at the end the following:
“(i) 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 Internet and Universal Service Act of 2006 to establish rules and enforcement provisions for traffic identification.

“(3) Network traffic identification enforcement.—The Commission shall adopt clear penalties, fines, and sanctions for insufficiently labeled traffic.”.
SEC. 256. RANDOM AUDITS.

Section 214(e) (47 U.S.C. 214(e)), as amended by section 254, is amended by adding at the end the following:

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

SEC. 257. WASTE, FRAUD, AND ABUSE.

The Federal Communications 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(h) of the Communications 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—

(A) identifying appropriate fiscal controls and accountability standards that shall be ap-
plied to the Schools and Libraries Program under section 254(h); (B) including a memorandum of understanding, or including contractual relationships, as the Commission determines appropriate, defining the administrative structure and processes by which the Universal Service Administrative Company administers the Schools and Libraries Program under section 254(h); (C) creating performance goals and measures for the Schools and Libraries Program under section 254(h), such goals and measures shall be used by the Commission to determine— (i) how efficiently and cost-effectively funds are spent in supporting the telecommunications needs of schools and libraries; and (ii) areas for improved operations; and (D) establishing appropriate enforcement actions, including imposition of sanctions on applicants and vendors who repeatedly and knowingly violate program rules set forth in section 254(h), such as debarment from the program for individuals convicted of crimes or held civilly
liable for actions taken in connection with the Schools and Libraries Program.

TITLE III—STREAMLINING FRANCHISING PROCESS

SEC. 301. SHORT TITLE.

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

Subtitle A—Updating the 1934 Act and Leveling the Regulatory Playing Field

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

(a) TERMINOLOGY.—Title VI (47 U.S.C. 521 et seq.), except for section 602 (47 U.S.C. 522), is amended—

(1) by striking “cable operator” and “cable operators” each place they appear and inserting “video service provider” or “video service providers”, as appropriate;

(2) by striking “cable service” and “cable services” each place they appear and inserting “video service” or “video services”, respectively;

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

May 1, 2006 (12:47 p.m.)
(4) by striking “operator” each place it appears and inserting “provider”;
(5) by striking “cassette” each place it appears;
and
(6) by striking “tape” each place it appears and inserting “copy”.

(b) Headings.—Title VI (47 U.S.C. 521 et seq.) is amended—
(1) by striking the heading for title VI and inserting “TITLE VI—VIDEO SERVICES”; 
(2) by striking the heading for part II and inserting “PART II—USE OF VIDEO SERVICES; RESTRICTIONS”; 
(3) by striking the heading for part III and inserting “PART III—FRANCHISING”; and 
(4) striking “CABLE” in the heading for sections 633 and 640 and inserting “VIDEO SERVICE”.

(c) Regulations.—
(1) New regulations.—Within 120 days after the date of enactment of this Act, the Commission shall issue regulations to implement sections 603, 612, 621, and 622 of the Communications Act of 1934, as amended by this Act.
(2) Updating existing regulations.—Within 120 days after the date of enactment of this Act, the Commission shall issue, as necessary, updated regulations needed under title VI or other provisions of the Communications Act of 1934 to reflect the amendments made by this Act.

SEC. 312. PURPOSE; FRANCHISE APPLICATIONS; SCOPE.

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

“SEC. 601. PURPOSE.

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

(b) Franchise Application; Scope.—Part I of title VI (47 U.S.C. 521 et seq.) is amended by adding at the end the following:

“SEC. 603. FRANCHISE APPLICATIONS.

“(a) In general.—

“(1) 30-day process.—Except as otherwise provided in this subsection, a franchising authority shall grant a franchise to provide video service within its franchise area to a video service provider within 30 calendar days after receiving a franchise application from the video service provider that is complete except for—
“(A) the franchise fee, as provided by section 622;

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

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

“(D) the point of contact for the franchising authority.

“(2) Standardized Application Form.—A video service provider shall use the standard franchise application form promulgated by the Commission under section 612.

“(3) Responsibilities of Franchise Authority.—Within 15 calendar days after receiving a franchise application under paragraph (1), a franchising authority may—

“(A) complete the application form by providing the information described in subparagraphs (A), (B), (C) and (D) of paragraph (1) in a manner that is consistent with the requirements of this title; and

“(B) return the completed application to the video service provider.
“(4) ACCEPTANCE OF TERMS.—A franchising agreement shall take effect on the date on which the completed franchise application is received by the applicant under paragraph (3)(B) unless the applicant notifies the franchising authority within 15 calendar days after receipt of the completed franchise application form that the terms provided are not accepted.

“(5) EXCEPTION.—This subsection does not require a franchise authority to approve or complete an application from a video service provider if a franchise held by that provider has been revoked under section 625(b) or 640 by the franchise authority.

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

“(1) effective on the 31st day after the franchising authority received the application;

“(2) for a term of 15 years;

“(3) with a franchise fee equal to the lesser
“(A) the fee paid by the cable operator with the most subscribers offering cable service in the franchise area; or

“(B) 5 percent of gross revenue (determined under section 622); and

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

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

“SEC. 604. NO EFFECT ON STATE LAWS OF GENERAL APPLICABILITY.

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

“SEC. 605. DIRECT BROADCAST SATELLITE SERVICE.

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

SEC. 313. STANDARD FRANCHISE APPLICATION FORM.

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

•S — IS

May 1, 2006 (12:47 p.m.)
SEC. 612. STANDARD FRANCHISE AGREEMENT FORM.

“Within 30 days after the date of enactment of the Video Competition and Savings for Consumers Act of 2006, the Commission shall promulgate a standard franchise agreement form, the use of which by franchising authorities shall be mandatory. The franchise application form shall include blank spaces to be filled in by the video service provider and the franchising authority, as appropriate, for—

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

“(2) the name and business address of each director and principal executive officers;

“(3) a point of contact for the video service provider;

“(4) a point of contact for the franchising authority;

“(5) the fees;

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

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

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

“(9) a description of the video service to be provided.”.
SEC. 314. DEFINITIONS.

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

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

(2) by striking “regulation);” in paragraph (4) and inserting “regulation) or its equivalent (as determined by the Commission).”;

(3) by inserting after paragraph (11) the following:

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

(4) by inserting after paragraph (12) the following:

“(12A) ‘institutional network’ means a communication network that is constructed or operated by a video service provider cable operator and that is generally available only to subscribers who are not residential subscribers.”;

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

(6) by inserting after paragraph (16) the following:

“(16A) ‘satellite carrier’ means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission
and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.”;

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

(8) by striking “cable operator” each place it appears in paragraph (17) and inserting “video service provider”; and

(9) by inserting after paragraph (20) the following:

“(24) VIDEO SERVICE.—The term ‘video service’ means—

“(A) video programming;

“(B) interactive on demand services; or

“(C) other programming services.
“(25) VIDEO SERVICE PROVIDER.—The term ‘video service provider’—

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

“(B) does not include—

“(i) a satellite carrier;

“(ii) any person providing video programming using radio communication directly to the recipient’s premises; or

“(iii) any provider of commercial mobile service (as defined in section 332(d)).”.

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

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

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

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

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

(A) a heading, in a form consistent with the form of the heading of paragraphs (24) and (25), as added by subsection (a) of this section
consisting of the term defined by such para-

graph, or the first term so defined in the para-

graph defines more than 1 term; and

(B) the words "The term".

Subtitle B—Streamlining the

Provision of Video Services

SEC. 331. FRANCHISE REQUIREMENTS AND RELATED PRO-

VISIONS.

(a) General Franchise Requirements.—Section

621 (47 U.S.C. 541) is amended—

(1) by striking subsection (a) and inserting the

following:

"(a) In General.—

"(1) Award of Franchise.—A franchising

authority may not—

"(A) grant an exclusive franchise; or

"(B) grant a franchise for a term shorter

than 5 years or longer than 15 years.

"(2) Preservation of Local Government

Power to Manage Public Rights-of-Way; Eas-

ements.—

"(A) In General.—Nothing in this title

affects the authority of a State or local govern-

ment to apply its laws or regulations governing

the use of the public rights of way in a manner
that is reasonable, competitively neutral, non-discriminatory, and consistent with State statutory police powers, including permitting, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages to ensure compliance with such laws and regulations.

“(B) LIMITATIONS ON PERMITTING FEES.—

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

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

“(II) impose any conditions for market entry or use this section as a barrier to entry by a video service provider; or

“(III) take any action that would delay the provision of video services by a video service provider in a local franchise area.
“(ii) Reconciliation of over-charges.—Within 30 days after any re-estimate of estimated direct costs for purposes of clause (i)(I) that—

“(I) requires a reduction in the permitting fee, the State or local government shall refund the excess, if any, to the video service provider; or

“(II) results in an increase in the permitting fee, the video service provider shall pay the difference between the amount paid and the increased fee to the State or local government.

“(C) Timely Action Required.—In managing the public rights-of-way a State or local government that issues permits or licenses for use of the public rights-of-way shall act upon any such request for use in a timely manner.

“(D) New Roads.—Nothing in this section shall affect the ability of a State or local government to impose reasonable limits on access to public rights-of-way associated with newly constructed roads.
“(E) Prevention of Abuse of Power.—If the Commission determines in a proceeding brought by a video service provider to enforce this subsection that a franchising authority abused the authority provided by this section in violation of subparagraph (B), the Commission may award reasonable attorneys’ fees and Commission costs to the video service provider.”; and

(2) by striking paragraph (1) of subsection (b) and inserting “(1) Except to the extent provided in subsection (f), a video service provider may not provide video service without a franchise.”.

(b) Franchise Fee.—Section 622 (47 U.S.C. 542) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

“(a) In General.—A franchising authority may impose and collect a franchise fee from a video service provider that provides video services within the local franchise area of that authority.

“(b) Amount.—

“(1) In General.—The franchise fee imposed by a franchising authority under subsection (a) for any 12-month period may not exceed 5 percent of
the video service provider’s gross revenue derived in such period. For purposes of this section, the 12-month period shall be the 12-month period applicable under the franchise for accounting purposes.

“(2) Prepaid or deferred payment arrangements.—Nothing in this subsection prohibits a franchising authority and a video service provider from agreeing that franchise fees which lawfully could be collected for any such 12-month period shall be paid on a prepaid or deferred basis, except that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.

“(3) Franchising authority and video service provider agreements.—Nothing in this section precludes a State or local government and a video service provider from entering into a voluntary commercial agreement, whereby in consideration for a mutually agreed upon reduction in the franchise fee under paragraph (1), the video service provider makes available to the local unit of government services, equipment, capabilities, or other valuable consideration.
“(4) PEG AND INSTITUTIONAL NETWORK FINANCIAL SUPPORT.—

“(A) IN GENERAL.—A video service provider with a franchise under this section for a franchise area may be required to pay an amount equal to not more than 1 percent of the video service provider’s gross revenue in the franchise area to the franchising authority for the support of public, educational, and governmental use and institutional networks. The payment shall be assessed and collected in a manner consistent with this section.

“(B) EXISTING FRANCHISE INSTITUTIONAL NETWORKS.—A franchising authority may require a cable operator to continue to provide any institutional network provided by that cable operator before executing a franchise agreement under this title.

“(C) INCREMENTAL COSTS.—If the incremental cost of operating an institutional network under subparagraph (B) is less than 1 percent of the video service provider’s gross revenue, the video service provider may deduct the incremental cost of operating the institutional network from the contribution required under
subparagraph (A). The franchising authority shall reimburse the video service provider for the amount by which the incremental cost of operating such institutional network exceeds any fee required under subparagraph (A).

“(D) ADJUSTMENT.—Every 15 years after the commencement of a franchise granted after April 30, 2006, a franchising authority may require a video service provider to increase the channel capacity designated for public, educational, or governmental use, and the channel capacity designated for such use on any institutional networks required under subparagraph (A). The increase may not exceed the greater of—

“(i) 1 channel; or

“(ii) 10 percent of the public, educational, or governmental channel capacity required of the video service provider before the required increase.”; and

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

“(d) OTHER TAXES, FEES, AND ASSESSMENTS NOT AFFECTED.—
“(1) IN GENERAL.—Nothing in this section shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation.

“(2) GENERALLY APPLICABLE TAXES, FEES, AND ASSESSMENTS.—Nothing in this section shall be construed to modify, impair, or supersede any Federal, State, or local tax, fee, or assessment, or other charges that are—

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

“(B) generally applicable (including any such tax, fee, assessment, or charge imposed on both utilities and video service providers or their services other than a tax, fee, assessment, or charge that is unduly discriminatory against video service providers or video service subscribers).

“(3) TELECOMMUNICATIONS SERVICES.—Nothing in this section is intended to modify, impair, or supersede the ability of any State to impose a tax, fee, or assessment (including any such tax, fee, or assessment that is imposed by the State and remitted to its political subdivisions) that is—
“(A) measured by the sales price of a telecommunications service and required to be paid by all telecommunications service providers or their customers (including video service providers) on a nondiscriminatory basis; and

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

“(e) ANNUAL REVIEW.—

“(1) AUDIT PROCEDURE.—A franchising authority that believes that it is not receiving the full amount of the video service fee imposed under this section may petition its State commission to commence an audit to ensure compliance with the definition of gross revenue and the calculation of fees under this section. The State commission shall coordinate audits to the maximum extent possible to avoid unnecessary duplication and cost on carriers.

“(2) REIMBURSEMENT OF FRANCHISING AUTHORITY FOR SUBSTANTIAL DEFICIENCIES.—If there is a final determination, after the dispute resolution procedures under subsection (f) have been completed, that the video service provider has under-
paid the franchise fee imposed under this section by
5 percent or more for the 12-month period that was
the subject of the review, the video service provider
shall reimburse the franchising authority for the rea-
sonable costs associated with the review. Those costs
include any reasonable amount paid by the fran-
chising authority to an independent third party for
conducting the review other than any amount paid
to an independent third party under a contingency
fee arrangement.

“(3) Statute of limitations.—A franchising
authority may not request a review under paragraph
(1) for any 12-month period ending more than 36
months before the date on which the request is sub-
mitted.

“(f) Dispute Resolution Procedure.—

“(1) Notice; 30-day period.—If there is a
dispute between a franchising authority and a video
service provider over the amount or payment of the
fee authorized by this section that has not been re-
solved between the parties in a reasonable period of
time under normal business procedures, the ag-
grieved party may give the other party written notice
of intent to initiate the dispute resolution procedure
provided by this subsection. Within 30 calendar days
after the notice has been received by the second party, representatives of each party with authority to settle the dispute shall meet at a mutually agreed upon time and place to attempt to negotiate a resolution of the dispute.

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

“(A) IN GENERAL.—If the dispute has not been resolved within 60 calendar days after the notice has been received by the second party, either party may file a complaint with the Commission.

“(B) INFORMATION PROVIDED IN THE COURSE OF NEGOTIATIONS.—For the purpose of any adjudication by the Commission under this subsection, information provided by either party to the other in negotiations under subparagraph (A) shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence.

“(C) STATUTE OF LIMITATIONS.—Notwithstanding subparagraph (A), no complaint may be filed with the Commission under this paragraph more than 3 years after the end of the quarter to which the disputed amount re-
lates, unless the 3-year period is extended by
written agreement between the video service
provider and the local government franchising
authority.

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

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

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

“(iii) any review by the Commission
be limited to the record before the admin-
istrative law judge;

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

“(v) any review of the Commission’s
decision shall be brought as provided in
section 402(a) of this Act.
“(g) GAAP STANDARDS.—For purposes of this section, all financial determinations and computations shall be made in accordance with generally accepted accounting principles except as otherwise provided.

“(h) DEFINITIONS.—In this section:

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

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

“(B) does not include—

“(i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and video service providers or their services but not including a tax, fee, or assessment which is unduly discriminatory against video service providers or subscribers);

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

“(iii) requirements or charges incidental to the awarding or enforcing of the
franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

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

“(2) GROSS REVENUE.—

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

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

“(ii) revenue received by a video service provider as compensation for carriage of video programming on the provider’s system.
“(B) AFFILIATES.—The gross revenue of a video service provider includes gross revenue of an affiliate to the extent the exclusion of the affiliate’s gross revenue would have the effect of permitting the video service provider to evade the payment of franchise fees which would otherwise be paid by that video service provider for video services provided within the local franchise area of the franchising authority imposing the fee.

“(C) REVENUE FROM BUNDLED OR FUNCTIONALLY INTEGRATED SERVICE.—In the case of a video service that is bundled or functionally integrated with other services, capabilities, or applications, the portion of the video service provider’s revenue attributable to such other services, capabilities, or applications shall be included in gross revenue unless the video service provider can reasonably identify the division or exclusion of such revenue from its books and records kept in the regular course of business.

“(D) EXCLUSIONS.—Gross revenue of a video service provider (or an affiliate to the extent otherwise included in the gross revenue of
the video service provider under subparagraph (B)) does not include—

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

“(ii) refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not excluded under clause (i);

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

“(I) voice, Internet access, or other broadband-enabled applications;

and

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

“(iv) any revenues received by a video service provider or its affiliates for the provision of directory or Internet advertising,
including yellow pages, white pages, banner advertisement, and electronic publishing;

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

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

“(vii) any revenue forgone from the provision of video service at no charge to any person other than forgone revenue exchanged for trades, barters, services, or other items of value;

“(viii) any tax, fee, or assessment of general applicability imposed on a subscriber, subscription, or subscription-related transaction by Federal, State, or local government that is required to be collected by the video service provider and remitted to the taxing authority, including sales taxes, use taxes, and utility user taxes;

“(ix) any revenue from the sale of capital assets or surplus equipment;
“(x) the reimbursement by programmers for marketing costs actually incurred by a video service provider for the introduction of new programming; or

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

“(I) resell the service; and

“(II) pay any applicable franchise fee with respect thereto.”

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

Part II of title VI (47 U.S.C. 541 et seq.) is amended—

(1) by striking section 623 and redesignating sections 624 and 624A as sections 623 and 624, respectively; and

(2) by striking sections 625 and 626 and inserting the following:

**SEC. 625. RENEWAL; REVOCATION.**

“(a) RENEWAL.—A video service provider may submit a written application for renewal of its franchise to a franchising authority not more than 180 days before the franchise expires. Any such application shall be made on the standard application form promulgated by the Com-
mission under section 612 and shall be treated under section 603 in the same manner as any other franchise application.

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

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

“(2) made false statements, or material omissions, in any filing with the Commission relating to the provision of video service in the franchise area; or

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

“(c) NOTICE; OPPORTUNITY TO CURE.—A franchising authority may not revoke a franchise unless it first provides—

“(1) written notice to the video service provider of the alleged violation in which the revocation would be based; and
“(2) a reasonable opportunity to cure the violation.

“(d) Finality of Decision.—Any decision of a franchising authority to revoke a franchise under this section is final for purposes of appeal. A video service provider whose franchise is revoked by a franchising authority may avail itself of the procedures in section 635 of this Act.

“(e) Prevention of Abuse of Power.—A franchising authority may not use this section as a barrier to entry by a video service provider. If the Commission determines, in a proceeding brought by a video service provider to enforce this subsection, that a franchising authority abused the authority provided by this section in violation of the preceding sentence, the Commission may award reasonable attorneys’ fees and Commission costs to the video service provider.”.

SEC. 333. PEG AND INSTITUTIONAL NETWORK OBLIGATIONS.

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

“SEC. 611. CHANNELS FOR PUBLIC, EDUCATIONAL, OR GOVERNMENTAL USE.

“(a) In General.—A video service provider that obtains a franchise shall provide channel capacity for public,
educational, or governmental use that is not less than the
channel capacity required of the video service provider
with the greatest number of public, educational, or govern-
mental use channels in the franchise area on the effective
date of that franchise. If there is no other video service
provider in the franchise area on the effective date of the
franchise, the video service provider shall provide the
amount of channel capacity for such use as determined
by Commission rule.

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

“(c) Transmission and Production of Program-
ming.—

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

“(2) Production Responsibility.—The pro-
duction of any programming provided under this
subsection shall be the responsibility of the franchising authority.

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

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

“(A) the interconnection between 2 video service providers in a franchise area for transmission of public, educational, or governmental programming, without material degradation in signal quality or functionality; and
“(B) the reasonable allocation of the costs
of such interconnection between such video
service providers.

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

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

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

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

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

**SEC. 337. SHARED FACILITIES.**

Part III of title VI (47 U.S.C. 541 et seq.) is amend-
(1) by striking section 627 and redesignating sections 628 (after its amendment by section 402) and 629 as sections 626 and 627, respectively; and

(2) by adding at the end the following:

“SEC. 628. ACCESS TO PROGRAMMING FOR SHARED FACILITIES.

“(a) In General.—A video service programming vendor in which a video service provider has an attributable interest may not deny a video service provider with a franchise under this title access to video programming solely because that video service provider uses a headend for its video service system that is also used, under a shared ownership or leasing agreement, as the headend for another video service system.

“(b) Video Service Programming Vendor Defined.—The term ‘video service programming vendor’ means a person engaged in the production, creation, or wholesale distribution for sale of video programming that is primarily intended for direct receipt by video service providers for retransmission to their video service subscribers.”.

SEC. 338. CONSUMER PROTECTION AND CUSTOMER SERVICE.

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

---

May 1, 2006 (12:47 p.m.)
“SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

“(a) REGULATIONS.—

“(1) IN GENERAL.—Not later than 120 days after the date of enactment of the Video Competition and Savings for Consumers Act of 2006, the Commission, after receiving comments from interested parties, including franchising authorities and consumer representatives, shall promulgate regulations, which may include penalties, with respect to customer service and consumer protection requirements for video service providers.

“(2) EFFECTIVE DATE OF REGULATIONS.—The regulations required by subsection (a) shall take effect 60 days after the date on which a final rule is promulgated by the Commission.

“(b) STATE COMMISSION AUTHORITY.—A State commission shall have the authority to enforce regulations promulgated under subsection (a).

“(c) FRANCHISING AUTHORITY STANDING.—A franchising authority shall have standing to file a complaint, otherwise initiate an enforcement proceeding, or intervene in a proceeding on behalf of consumers in its franchise area under the regulations promulgated under subsection (a).”.
SEC. 339. REDLINING.

Part IV of title VI (47 U.S.C. 551 et seq.) is amended by adding at the end the following:

"SEC. 642. REDLINING.

(a) In General.—A video service provider may not deny access to its video service to any group of potential residential video service subscribers because of the income, race, or religion of that group.

(b) Enforcement.—This section shall be enforced by the Commission through a complaint-initiated adjudication process. A complaint may be filed by a resident of the franchising area who is aggrieved by a violation of subsection (a) or by a franchising authority on behalf of residents of its franchise area.

(c) Remedies.—If the Commission determines that a video service provider has violated subsection (a), it—

(1) shall ensure that the video service provider extends access to any group denied access in violation of subsection (a);

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

(3) may revoke a video service provider’s franchise to provide video services if it determines, after notice and an opportunity for a hearing, that the

S —— IS

May 1, 2006 (12:47 p.m.)
video service provider has willfully and repeatedly
violated this section.”.

**Subtitle C—Miscellaneous and
Conforming Amendments**

**SEC. 351. MISCELLANEOUS AMENDMENTS.**

(a) **Municipal Operators.**—Section 621(f) (47
U.S.C. 541(f)) is amended to read as follows:

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

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

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

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

“(3) **Required Showing in Litigation.**—In
any lawsuit challenging the amount of the franchise
fee imposed under this subsection, the franchising
authority shall be required to demonstrate that the
rate structure reflects all costs of the franchise fees.’’.

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

(1) by striking “10 years after the date of enactment of this section,” and inserting “on October 5, 2012,”; and

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

(d) UPDATING.—Section 613 is amended—

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

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

(e) REPEAL.—Section 617 (47 U.S.C. 537) is repealed.

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

(1) by striking paragraph (1); and

(2) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.
(g) Restructuring Part IV.—Part IV of title VI (47 U.S.C. 551 et seq.) is amended—

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

(2) by redesignating sections 638, 639, 640, 641, and 642 (as added by section 339 of this Act) as sections 636, 637, 638, 639, and 640 respectively.

(h) Conforming Amendments for Retransmission.—

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

(A) by striking “cable system” in paragraph (1) and inserting “video service provider”; and

(B) by inserting “The term ‘video service provider’ has the meaning given it in section 602(25) of this Act.” after “title.” in the matter following subparagraph (E) of paragraph (2).

(2) Section 336(b) (47 U.S.C. 336(b)) is amended by striking “section 614 or 615 or be deemed a multichannel video programming distributor for purposes of section 628;” and inserting “section 614 or 615;”.
Subtitle D—Effective Dates and Transition Rules.

SEC. 381. EFFECTIVE DATES; PHASE-IN.

(a) IN GENERAL.—

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

(2) INITIATION OF CERTAIN PROCEEDINGS.—Notwithstanding paragraph (1), the Federal Communications Commission shall initiate any proceeding required by title VI of the Communications Act of 1934, as amended by this Act, or made necessary by such amendment as soon as practicable after the date of enactment of this Act.

(b) APPLICATION TO EXISTING FRANCHISE AGREEMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of title VI of the Communications Act of 1934, as amended by this Act, shall not apply to a franchise agreement in effect on the date of enactment of this Act between a franchising authority and a video service provider before the expiration date of the agreement, as determined with-
out regard to any renewal or extension of the agree-
ment. The provisions of title VI of that Act, as in
effect on the day before the date of enactment of
this Act shall continue to apply to any such fran-
chise agreement as provided by subsection (c) until
the earlier of—

(A) the expiration date of the agreement;
or

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

(2) COMPETITION TRIGGER.—

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

(B) NEW FRANCHISE AGREEMENT SUPER-
SEDES EXISTING AGREEMENT.—Upon receipt of
notice under subparagraph (A), a cable oper-
ator may submit an application for a franchise
under section 603 of the Communications Act
of 1934, as amended by this Act. When the franchise is granted—

(i) the terms and conditions of the new franchise agreement supersede the existing franchise agreement; and

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

(e) Limited Application of Old Title VI.—

(1) In general.—Except as provided in subsection (b) or otherwise explicitly provided in new title VI, the provisions of old title VI (and all regulations, rulings, waivers, orders, and franchise agreements under old title VI) shall continue in effect after the date of enactment of this Act with respect to any cable operator to which they applied before that date until the earlier of—

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

(B) that date on which a new franchise agreement takes effect that replaces a cable operator’s franchise agreement described in subparagraph (A).
(2) DEFINITIONS.—In this subsection:

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

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

TITLE IV—VIDEO CONTENT

SEC. 401. SHORT TITLE.

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

Subtitle A—Sports Freedom

SEC. 401. SHORT TITLE.

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

SEC. 402. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

(a) IN GENERAL.—Section 628 (47 U.S.C. 548), before its redesignation by section 337 of this Act, is amended to read as follows:
SEC. 628. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

(a) Purpose.—The purpose of this section is—

(1) to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market;

(2) to increase the availability of MVPD programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming; and

(3) to spur the development of communications technologies.

(b) Prohibition.—It is unlawful for an MVPD, an MVPD programming vendor in which an MVPD has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any MVPD from providing MVPD programming or satellite broadcast programming to subscribers or consumers.

(c) Regulations Required.—

(1) Proceeding Required.—Not later than 180 days after the date of enactment of the Sports

May 1, 2006 (12:47 p.m.)
Freedom Act of 2006, the Commission shall prescribe regulations to specify particular conduct that is prohibited by subsection (b), in order to promote—

“(A) the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market; and

“(B) the continuing development of communications technologies.

“(2) Minimum contents of regulation.— The regulations required under paragraph (1) shall—

“(A) establish effective safeguards to prevent an MVPD which has an attributable interest in an MVPD programming vendor or a satellite broadcast programming vendor from unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, MVPD programming or satellite broadcast programming to any unaffiliated MVPD;

“(B) prohibit discrimination by an MVPD programming vendor in which an MVPD has an attributable interest or by a satellite broadcast
programming vendor in the prices, terms, and conditions of sale or delivery of MVPD programming or satellite broadcast programming among or between cable systems, cable operators, or other MVPDs, or their agents or buying groups, except that an MVPD programming vendor in which an MVPD has an attributable interest or such a satellite broadcast programming vendor shall not be prohibited from—

“(i) imposing reasonable requirements for—

“(I) creditworthiness;

“(II) offering of service; and

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

“(ii) establishing different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of MVPD programming or satellite broadcast programming;

“(iii) establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or
other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor; or

“(iv) entering into an exclusive contract that is permitted under subparagraph (D);

“(C) prohibit practices, understandings, arrangements, and activities, including exclusive contracts for MVPD programming or satellite broadcast programming between an MVPD and an MVPD programming vendor or satellite broadcast programming vendor, that prevent an MVPD from obtaining such programming from any MVPD programming vendor in which an MVPD has an attributable interest or any satellite broadcast programming vendor in which an MVPD has an attributable interest for distribution to persons in areas not served by an MVPD as of the date of enactment of the Sports Freedom Act of 2006; and

“(D) with respect to distribution to persons in areas served by an MVPD, prohibit exclusive contracts for MVPD programming or satellite broadcast programming between an MVPD and an MVPD programming vendor in
which an MVPD has an attributable interest or
a satellite broadcast programming vendor in
which an MVPD has an attributable interest,
unless the Commission determines (in accord-
ance with paragraph (4)) that such contract is
in the public interest.

“(E) Preemption and rescheduling
of children’s programs.—Nothing in this
section shall be construed in a manner that lim-
its the discretion of a licensee of a local tele-
vision broadcast station to preempt or to re-
schedule programming specifically designed to
serve educational and informational needs of
children in order to air timely coverage of news
or sporting events.

“(3) Limitations.—

“(A) Geographic limitations.—Nothing
in this section shall require any person who is
engaged in the national or regional distribution
of video programming to make such program-
ming available in any geographic area beyond
which such programming has been authorized
or licensed for distribution.
“(B) Applicability to satellite retransmissions.—Nothing in this section shall apply—

“(i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming; or

“(ii) to any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

“(C) Exclusion of individual video programs.—Nothing in this section shall apply to a specific individual video program produced by an MVPD for local distribution by that MVPD and not made available directly or indirectly to unaffiliated MVPDs, if—

“(i) all other video programming carried on a programming channel or network on which the individual video program is carried, is made available to unaffiliated MVPDs pursuant to paragraph (2)(D); and
“(ii) such specific individual video program is not the transmission of a sporting event.

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

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

“(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;
“(B) the effect of such exclusive contract on competition from multichannel video programming distribution technologies other than cable;

“(C) the effect of such exclusive contract on the attraction of capital investment in the production and distribution of new MVPD programming;

“(D) the effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

“(E) the duration of the exclusive contract.

“(5) SUNSET PROVISION.—The prohibition required by paragraph (2)(D) shall cease to be effective 10 years after the date of enactment of the Sports Freedom Act of 2006, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

“(d) ADJUDICATORY PROCEEDING.—

“(1) IN GENERAL.—An MVPD aggrieved by conduct that it alleges constitutes a violation of sub-
section (b), or the regulations of the Commission under subsection (c), may commence an adjudicatory proceeding at the Commission.

“(2) Request for production of agreements.—In any proceeding commenced under paragraph (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 MVPD 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 adjudicatory 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 MVPD.
“(2) ADDITIONAL REMEDIES.—The remedies provided under paragraph (1) are in addition to any remedy available to an MVPD 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 120 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.

“(g) REPORTS.—The Commission shall, beginning not later than 18 months after promulgation of the regula-
tions required by subsection (c), annually report to Con-
gress on the status of competition in the market for the
delivery of video programming.

“(h) EXEMPTIONS FOR PRIOR CONTRACTS.—

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

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

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

“(2) LIMITATION ON RENEWALS.—

“(A) SATELLITE CABLE PROGRAMMING
CONTRACTS.—A contract pertaining to satellite
cable programming or satellite broadcast pro-
gramming that was entered into on or before
June 1, 1990, but that is renewed or extended
after the date of enactment of the Sports Free-
dom Act of 2006 shall not be exempt under paragraph (1).

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

“(i) DEFINITIONS.—In this section:

“(1) MVPD.—The term “MVPD” means multichannel video programming distributor.

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

“(A) DIRECT RECEIPT.—Video programming primarily intended for the direct receipt by MVPDs for their retransmission to MVPD subscribers (including any ancillary data transmission).

“(B) ADDITIONAL PROGRAMMING.—

“(i) IN GENERAL.—Additional types of programming content that the Commission determines in a rulemaking proceeding to be completed not later than 120 days from the date of enactment of the
Sports Freedom Act of 2006, as of the
time of such rulemaking, of a type that
is—

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

“(aa) digital or analog;
“(bb) compressed or
uncompressed;
“(cc) encrypted or
unencrypted; or
“(dd) provided on a serial,
pay-per-view, or on demand
basis; and

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

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

May 1, 2006 (12:47 p.m.)
ferent forms of content so that certain content or programming is not included within the meaning of MVPD programming solely because it is integrated with other content that is of a type that is primarily intended for the direct receipt by MVPDs for their retransmission to MVPD subscribers.

“(iii) Modification of Programming Defined as MVPD Programming.—At any time after 3 years following the conclusion of the rulemaking proceeding required under clause (ii), any interested MVPD or MVPD programming vendor may petition the Commission to modify the types of additional programming content included by the Commission within the definition of MVPD programming in light of—

“(I) the purpose of this section;
“(II) market conditions at the time of such petition; and
“(III) the factors to be considered by the Commission under clause (ii).
“(3) MVPD PROGRAMMING VENDOR.—The term ‘MVPD programming vendor’—

“(A) means a person engaged in the production, creation, or wholesale distribution for sale of MVPD programming; and

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

“(4) SATELLITE BROADCAST PROGRAMMING.—

The term ‘satellite broadcast programming’ means broadcast video programming when—

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

“(B) the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

“(5) SATELLITE BROADCAST PROGRAMMING VENDOR.—The term ‘satellite broadcast programming vendor’ means a fixed service satellite carrier that provides satellite broadcast programming.

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

“(A) means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming; but

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

“(j) Common carriers.—

“(1) In general.—Any provision that applies to an MVPD under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers.

“(2) Attributable interest.—Any provision that applies to an MVPD programming vendor in which an MVPD has an attributable interest shall apply to any MVPD programming vendor in which such common carrier has an attributable interest.

“(3) Limitation.—For the purposes of this subsection, 2 or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in an MVPD programming vendor (or its parent company).”.
(b) EFFECTIVE DATE.—Notwithstanding section 381 of this Act, the amendment made by subsection (a) shall take effect on the date of enactment of this Act.

SEC. 403. REGULATIONS.

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

Subtitle B—National Satellite

SEC. 431. AVAILABILITY OF CERTAIN LICENSED SERVICES IN NONCONTIGUOUS STATES.

Notwithstanding any other provision of law, before the Federal Communications Commission grants a license under the Communications Act of 1934 (47 U.S.C. 151 et seq.) to a satellite carrier (as defined in section 338(k)(5) of that Act (47 U.S.C. 338(k)(5))), it shall ensure that, to the greatest extent technically feasible, if the license is granted the service provided by that carrier pursuant to the license will be available to subscribers in the noncontiguous States to the same extent as that service is available to subscribers in the contiguous States.
Subtitle C—Video and Audio Flag

SEC. 451. SHORT TITLE.

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

SEC. 452. DIGITAL VIDEO BROADCASTING.

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

“SEC. 342. PROTECTION OF DIGITAL VIDEO BROADCASTING CONTENT.

“(a) In General.—Within 30 days after the date of enactment of the Digital Content Protection Act of 2006, the Commission shall initiate, and within 6 months after that date conclude, a proceeding—

“(1) to implement its Report and Order in the matter of Digital Broadcast Content Protection, FCC 03-273 and its Report and Order in the matter of Digital Output Protection Technology and Recording Method Certifications, FCC 04-193; and

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

“(b) REQUIREMENTS.—In the regulations promulgated under this section, the Commission shall permit transmission of—
“(1) short excerpts of broadcast digital television content over the Internet; and

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

“(C) broadcast digital television content over the Internet for distance learning purposes;

“(2) permit government bodies or accredited nonprofit educational institutions to use copyrighted work in distance education courses pursuant to the Technology, Education, and Copyright Harmonization Act of 2002 and the amendments made by that Act;

“(3) permit the redistribution of news and public affairs programming (not including sports) in which the primary commercial value depends on timeliness as determined by the broadcaster or broadcasting network; and

“(4) require that any authorized redistribution control technology and any authorized recording method technology approved by the Commission under this Section that is publicly offered to licens-
ees, be licensed on reasonable and nondiscriminatory terms and conditions.

“(c) Review of Determinations.—The Commission may review any such determination described in subsection (b)(3) by a broadcaster or broadcasting network if the Commission receives a bona fide complaint alleging, or otherwise has reason to believe, that the determination is inconsistent with the requirements of that subsection or the regulations promulgated thereunder.

“(d) Effective Date of Regulations.—Regulations promulgated under this section shall take effect 12 months after the date on which the Commission issues a final rule under this section.”.

SEC. 453. DIGITAL AUDIO BROADCASTING.

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

“SEC. 343. PROTECTION OF DIGITAL AUDIO BROADCASTING CONTENT.

“(a) In General.—Subject to section 454(d)(2) of the Digital Content Protection Act of 2006, the Commission may promulgate regulations governing the indiscriminate redistribution of audio content with respect to—

“(1) digital radio broadcasts;

“(2) satellite digital radio transmissions; and
(3) digital radios.

(b) MONITORING ORGANIZATIONS.—The Commission shall ensure that a performing rights society or a mechanical rights organization, or any entity acting on behalf of such a society or organization, is granted a license for free or for a de minimis fee to cover only the reasonable costs to the licensor of providing the license, and on reasonable, nondiscriminatory terms and conditions, to access and retransmit as necessary any content contained in such transmissions protected by content protection or similar technologies, if such licenses are for purposes of carrying out the activities of such society, organization, or entity in monitoring the public performance or other uses of copyrighted works, and such society, organization, or entity employs reasonable methods to protect any such content accessed from further distribution.”.

SEC. 454. DIGITAL AUDIO REVIEW BOARD.

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

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

(1) the information technology industry;

(2) the software industry;
(3) the consumer electronics industry;

(4) the radio broadcasting industry;

(5) the satellite radio broadcasting industry;

(6) the cable industry;

(7) the audio recording industry;

(8) the music publishing industry;

(9) performing rights societies, including—

   (A) the American Society of Composers, Authors and Publishers;

   (B) Broadcast Music, Inc.; and

   (C) SESAC, Inc.;

(10) public interest organizations;

(11) organizations representing recording artists, performers and musicians; and

(12) any other group that the Commission determines will be directly affected by adoption of broadcast flag technology regulations.

(c) DUTY.—

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

   (A) represents a consensus of the members of the Board; and
(B) are consistent with fair use principles.

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

(A) substantial progress has been made by the Board toward the development of a proposed regulation;

(B) the members of the Board are continuing to negotiate in good faith; and

(C) there is a reasonable expectation that the Board will draft and submit a proposed regulation before the expiration of the extended period of time.

(d) COMMISSION TREATMENT OF PROPOSED REGULATION.—

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

(2) DEREFERENCE; DEADLINE.—If the Board submits a proposed regulation under this section the Commission, in promulgating a regulation under sec-
tion 343 of the Communications Act of 1934, shall—

(A) give substantial deference to the proposed regulation submitted by the Board; and

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

(3) COMMISSION ACTION IF NO BOARD ACTION.—If the Board does not submit a proposed regulation to the Commission within 1 year after the date of enactment of this Act, plus any extension granted by the Commission under subsection (c), the Commission may not promulgate regulations under section 343 of the Communications Act of 1934, but shall submit recommendations to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce.

(e) ADMINISTRATIVE PROVISIONS.—

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

(2) EXECUTIVE DIRECTOR. The Chairman of the Commission may, without regard to civil service laws and regulations, appoint and terminate an Executive Director and such other additional personnel
as may be necessary to enable the Board to perform its duties. The Executive Director shall be compensated at a rate not to exceed the rate of pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) Temporary and intermittent services.—In carrying out its duty, the Board may procure temporary and intermittent services of consultants and experts under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(4) Detail of government employees.—Upon request of the Board, the head of any Federal agency may detail any Federal Government employee to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) Administrative support.—Notwithstanding section 7(e) of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall provide the Board with such administrative and supportive services as are necessary to ensure that the Board can carry out its functions.
(6) TERMINATION.—The Board shall terminate on the date on which it submits a proposed regulation to the Commission or at the discretion of the Chairman of the Federal Communications Commission.

TITLE V—MUNICIPAL BROADBAND

SEC. 501. SHORT TITLE.

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

SEC. 502. STATE REGULATION OF MUNICIPAL BROADBAND NETWORKS.

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

(1) by redesignating subsection (c) as subsection (h);

(2) by inserting after subsection (b) the following:

“(c) LOCAL GOVERNMENT PROVISION OF ADVANCED COMMUNICATIONS CAPABILITY AND SERVICES.—No State or local government statute, regulation, or other State or local government legal requirement may prohibit or have the effect of prohibiting any public provider from providing, to any person or any public or private entity, advanced communications capability or any service that util—
izes the advanced communications capability provided by
such provider.

“(d) SAFEGUARDS.—

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

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

“(3) OPEN ACCESS TO NON-GOVERNMENTAL
ENTITIES.—If a public provider initiates a project to
provide advanced communications capability to the
public, it shall grant to a requesting non-govern-
mental entity the right to place similar facilities in
the same conduit, trenches, and locations as the public provider for concurrent or future use under the same conditions as the public provider. A public provider may limit, or refuse to grant, such a right to a requesting non-governmental entity with respect to any such conduit, trench, or location for public safety reasons.

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

“(e) PUBLIC-PRIVATE PARTNERSHIPS ENCOURAGED.—If a public provider initiates a project to provide advanced communications capability to the public through a public-private partnership, the public provider shall publish a request for proposals in a publication of general circulation in the community in which the project is to be implemented and solicit bids through an open bid process.
“(f) Protection Against Undue Government Competition with Private Sector.—

“(1) Notice and opportunity to bid required.—If a public provider decides not to initiate a project to provide advanced communications capability to the public through a public-private partnership, then, before the public provider may provide advanced communications capability to the public, it shall—

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

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

“(2) Notice requirements.—The public provider shall include in the notice required by paragraph (1) a description of the proposed scope of the advanced communications capability to be provided, including—

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

“(B) the coverage area;
“(C) service tiers and pricing; and

“(D) any proposal for providing advanced communications capability to low-income areas, or other demographically or geographically defined areas, that are not the same as the terms, service, pricing, or tiers applicable in other portions of the coverage area.

“(3) PRIVATE SECTOR RIGHT OF FIRST REFUSAL.—The public provider may proceed with the project only if, during the 30-day period, no private sector entity submits a bid to provide equivalent advanced communications capability of the same scope for the same or lower cost to consumers, as determined by a neutral third party, and demonstrates the requisite technical and financial ability to provide that capability. The neutral third party shall be selected by the public provider, and the private sector entity shall bear the costs of using a neutral third party.

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

“(A) any contract or other arrangement under which a public provider is providing ad-
advanced communications capability to the public as of April 20, 2006; or

“(B) any public provider proposal to provide advanced communications capability to the public that, as of April 20, 2006—

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

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

or

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

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

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

“(3) PUBLIC PROVIDER.—The term ‘public provider’ 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-Determination and Education Assistance Act (25 U.S.C.
450b(e)), or any entity that is owned, controlled, or otherwise affiliated with a State, political subdivision thereof, agency, authority, or instrumentality, or Indian tribe.”; and

(4) by striking “CAPABILITY.—” in paragraph (1) of subsection (h), as redesignated, and inserting “CAPABILITY; ADVANCED COMMUNICATIONS CAPABILITY.—”; 

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

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

TITLE VI—WIRELESS INNOVATION NETWORKS

SEC. 601. SHORT TITLE.

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

SEC. 602. ELIGIBLE TELEVISION SPECTRUM MADE AVAILABLE FOR WIRELESS USE.

Part I of title III (47 U.S.C. 301 et seq.), as amended by section 453 of this Act, is further amended by adding at the end the following:
SEC. 344. ELIGIBLE BROADCAST TELEVISION SPECTRUM MADE AVAILABLE FOR WIRELESS USE.

(a) In general.—Effective 270 days after the date of enactment of the WIN Act of 2006, a certified unlicensed device may use eligible broadcast television frequencies in a manner that protects licensees from harmful interference.

(b) Commission to facilitate use.—Within 270 days after the date of enactment of that Act, the Commission shall adopt 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 that demonstrates (A) compliance with the requirements set forth pursuant to this paragraph and (B) that such compliance effectively protects licensees from harmful interference;

(3) to require manufacturers of such devices to include a means of disabling or modifying the device remotely if the Commission determines that cer-
tain certified unlicensed devices may cause harmful interference to licensees;

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

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

“(c) DEFINITIONS.—In this section:

“(1) CERTIFIED UNLICENSED DEVICE.—The term ‘certified unlicensed device’ means a device certified under subsection (b)(2).

“(2) ELIGIBLE BROADCAST TELEVISION FREQUENCIES.—The term ‘eligible broadcast television frequencies’ means the following frequencies:

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

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

“(C) All frequencies between 174 and 216 megaHertz, inclusive.
“(D) All frequencies between 470 and 608 megaHertz, inclusive.

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

“(3) Licensee.—The term ‘licensee’ means a licensee, as defined in section 3(24), that holds a license to operate in the eligible broadcast television frequencies and is operating in such frequencies in a manner that is not inconsistent with its license.”

**TITLE VII—DIGITAL TELEVISION**

**SEC. 701. ANALOG AND DIGITAL TELEVISION SETS AND CONVERTER BOXES; CONSUMER EDUCATION AND REQUIREMENTS TO REDUCE THE GOVERNMENT COST OF THE CONVERTER BOX PROGRAM.**

(a) Consumer Education Requirements.—Section 330 (47 U.S.C. 330) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

“(d) Consumer Education Requirements Regarding Analog Receivers.—

“(1) Requirements for Manufacturers.—

The manufacturer of any analog television set manu-
factured in the United States or shipped in inter-
state commerce shall—

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

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

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

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

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

“(3) REQUIREMENTS FOR OTHER RETAIL-
ERS.—Not later than 60 days after the conclusion of
the rulemaking proceeding required under paragraph
(5), any retailer of television sets described in para-
graph (2) that sells such television sets via direct
mail, catalog, or electronic means, shall include in all
advertisements or descriptions of such television set
the product and the information described in para-
graph (4).

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

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

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

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

“(B) clearly explain—

“(i) what the digital transition is;
“(ii) how it serves the public interest;
“(iii) how it will benefit public safety
and improve wireless services;
“(iv) how it may affect television view-
ers, including—
“(I) the deadline for termination of analog television broadcasting;

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

“(III) the information that analog-only television sets will continue to work as before with cable and satellite television systems, gaming consoles, VCRs, DVD players and recorders, camcorders, and similar products; and

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

“(v) how the transition will affect subscribers of multichannel video programming distributors (as defined in section 602); and

“(vi) that consumers who have analog-only television sets will need a converter box in order to receive over-the-air broadcast programming; and

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

“(6) COMMISSION OUTREACH.—
“(A) IN GENERAL.—Beginning within 1 month after the date of enactment of the Communications, Consumer’s Choice, and Broadband Deployment of 2006, the Commission shall engage in a public outreach program to educate consumers about the digital television transition, including the consumer information described in paragraph (5).

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

“(7) PUBLIC SERVICE ANNOUNCEMENTS.—Each day from July 17, 2009, through February 17, 2009, each television broadcast licensee or permittee shall broadcast 2 30-second public service announcements at such times as the Commission may require notifying the public of the digital transition and containing the address of the website provided by the Commission under paragraph (6) and such additional consumer information as the Commission may require, including the consumer information described in paragraph (5).
“(8) Penalty.—In addition to any other civil or criminal penalty provided by law, the Commission shall issue civil forfeitures for violations of the requirements of this subsection in an amount equal to not more than 3 times the amount of the forfeiture penalty established by section 503(a)(2)(A).

“(9) Sunset.—The requirements of this subsection shall cease to apply to manufacturers and retailers on April 1, 2009, unless the Commission determines that the information required to be displayed under this subsection should continue to be displayed in the public interest.”.

(b) DTV Working Group on Consumer Education, Outreach, and Technical Assistance.—

(1) In general.—Within 60 days after the date of enactment of this Act, the Federal Communications Commission shall establish an advisory committee, to be known as the DTV Working Group, to consult with State and local governments, providers of low income assistance programs, educational institutions, and community groups to promote consumer outreach and to provide logistical assistance to consumers, including converter box delivery and installation.
(2) MEMBERSHIP.—The Commission shall appoint to the DTV Working Group representatives of groups involved with the transition to digital television, including the Commission, the National Telecommunications and Information Administration, other Federal agencies, television broadcasters, multichannel video programming distributors, consumer electronics manufacturers and manufacturers of peripheral devices, broadcast antenna and tuner manufacturers, retail providers of consumer electronics equipment, consumers, and public interest groups (including the American Association of Retired Persons). Members of the DTV Working Group shall serve without compensation and shall not be considered Federal employees by reason of their service on the advisory committee.

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

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

(B) to ensure that the Commission’s national plan includes, at a minimum—
(i) recommended procedures for public service announcements by broadcasters and multichannel video programming distributors, toll-free information hotlines, retail displays or notices, such as making available at the point of sale for television sets and equipment designed to receive over-the-air broadcast television signals a sufficient supply of free handbills containing that consumer information; and

(ii) recommended procedures for direct mail, billboards, and community events related to the digital television transition;

(C) to ensure that the Commission’s national plan includes a requirement that all licensed broadcasters in a designated market area submit a joint plan to the Commission addressing the public outreach and public service announcement requirements required by this title to inform consumers in those areas of the transition to digital television that—

(i) includes a description of how each broadcaster will fulfill the public service announcement requirements required
under section 330(d)(7) of the Communications Act of 1934 (47 U.S.C. 330(d)(7));

(ii) includes market research by each broadcaster regarding projected consumer demand for converter boxes in their designated market area; and

(iii) will be shared with retailers inside their designated market area so that such retailers may stock the appropriate amount of converter boxes to meet the needs of consumers within each designated market area; and

(D) to provide to the Commission a DTV Progress Report that reflects ongoing and planned efforts by the private sector, both nationally and in various television broadcast markets, to inform consumers about the digital transition and to minimize potential disruption to consumers attributable to the transition to digital broadcasting.

(e) Requirements to Promote Sale of Digital Televisions and Converter Boxes.—
(1) DIGITAL TUNER MANDATE.—Part I of title III (47 U.S.C. 301 et seq.) is amended by inserting after section 303 the following:

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

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

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

(2) COMMISSION NOT TO CHANGE SCHEDULE.—

The Federal Communications Commission may not revise the digital television reception capability implementation schedule under section 15.117(i) of its regulations (47 C.F.R. 15.117(i)) except to conform that section to the requirements of section 303A of the Communications Act of 1934.

(3) CONVERTER BOXES.—The Commission shall set the energy standards for converter boxes. Notwithstanding any other provision of law, those standards shall govern the energy standards for con-
converter boxes sold for use in the United States. This paragraph shall not apply after May 17, 2009.

(d) DOWNCONVERSION FROM DIGITAL SIGNALS TO ANALOG SIGNALS.

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

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

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

“(B) DIGITAL VIDEO SIGNAL.—With respect to any television station that is transmitting broadcast programming exclusively in the digital television service in a local market, a cable operator of a cable system in that market shall carry any digital video signal requiring carriage under this section and program-related material in the digital format transmitted by that station, without material degradation, if the licensee for that station relies on this section or section 615 to obtain carriage of the digital video signal and program-related material on that cable system in that market.

“(C) MULTIPLE FORMATS PERMITTED.—A cable operator of a cable system may offer the
digital video signal and program-related material of a local television station described in subparagraph (A) in any analog or digital format or formats, whether or not doing so requires conversion from the format transmitted by the local television station, so long as—

“(i) the cable operator offers the digital video signal and program-related material in the converted analog or digital format or formats without material degradation; and

“(ii) also offers the digital video signal and program-related material in the manner or manners required by this paragraph.

“(D) TRANSITIONAL CONVERSIONS.—Notwithstanding the requirement in subparagraph (B) to carry the digital video signal and program-related material in the digital format transmitted by the local television station, but subject to the prohibition on material degradation, until February 17, 2014—

“(i) a cable operator—

“(I) shall offer the digital video signal and program-related material
in the format or formats necessary for such stream and material to be viewable on analog and digital televisions; and

“(II) may convert the digital video signal and program-related material to standard-definition digital format in lieu of offering it in the digital format transmitted by the local television station;

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

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

“(II) may, but shall not be required to, offer the digital video signal and program-related material in any digital format or formats.

“(E) LOCATION AND METHOD OF CONVERSION.—A cable operator of a cable system may
perform any conversion permitted or required by this paragraph at any location, from the cable head-end to the customer premises, inclusive.

“(F) CONVERSIONS NOT TREATED AS DEGRADATION.—Any conversion permitted or required by this paragraph shall not, by itself, be treated as a material degradation.

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

“(H) DEFINITION OF STANDARD-DEFINITION FORMAT.—For purposes of this paragraph, a stream shall be in standard definition digital format if such stream meets the criteria for such format specified in the standard recognized by the Commission in section 73.682 of its rules (47 CFR 73.682) or a successor regulation.”.

(2) TIERING.—

(A) AMENDMENT TO COMMUNICATIONS ACT.—Clause (iii) of section 623(b)(7)(A) (47 U.S.C. 543(b)(7)(A)(iii)) is amended to read as follows:
“(iii) Any analog signal and any digital video signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.”.

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

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

(A) by redesignating subsection (h) as subsection (i); and

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

“(i) MATERIAL DEGRADATION.—For purposes of this section and section 615, transmission of a digital signal over a cable system in a compressed bitstream shall not be considered material degradation as long as such compression does not materially affect the picture quality the consumer receives.”.
SEC. 702. DIGITAL STREAM REQUIREMENT FOR THE BLIND.

(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.
(c) 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.

SEC. 703. STATUS OF INTERNATIONAL COORDINATION.

Until the date on which the international coordination with Canada and Mexico of the DTV table of allotments is complete (as determined by the Federal Communications Commission), the Federal Communications Commission shall submit a report every 6 months on the status of that international coordination to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce.

TITLE VIII—PROTECTING CHILDREN

SEC. 801. VIDEO TRANSMISSION OF CHILD PORNOGRAPHY.

Section 621 (47 U.S.C. 541) is amended by adding at the end the following:

“(j) CHILD PORNOGRAPHY.—

“(1) IN GENERAL.—A video service provider authorized to provide video service in a local franchise

May 1, 2006 (12:47 p.m.)
area shall comply with the regulations on child por-
nography promulgated pursuant to paragraph (2).

“(2) REGULATIONS.—Not later than 180 days
after the date of enactment of the Communications,
Consumer’s Choice, and Broadband Deployment of
2006, the Commission shall promulgate regulations
to require a video service to prevent the distribution
of child pornography (as such term is defined in sec-
tion 254(h)(7)(F)) over its network.”.

TITLE IX—INTERNET
NEUTRALITY

SEC. 901. NETWORK NEUTRALITY.

(a) IN GENERAL.—Beginning 1 year after the date
of enactment of this Act, the Federal Communications
Commission shall report annually to the Senate Com-
mittee on Commerce, Science, and Transportation and the
House of Representatives Committee on Energy and Com-
merce for 5 years regarding—

(1) the developments in Internet traffic proc-
essing, routing, peering, transport, and interconnec-
tion;

(2) how such developments impact the free flow
of information over the public Internet and the con-
sumer experience using the public Internet
(3) business relationships between broadband service providers and applications and online user services; and

(4) the development of and services available over public and private Internet offerings.

(b) Determinations and Recommendations.—If the Commission determines that there are significant problems with any of the matters described in subsection (a) the Commission shall make such recommendations in its next annual report under subsection (a) as it deems necessary and appropriate to ensure that consumers can access lawful content and run Internet applications and services over the public Internet subject to the bandwidth purchased and the needs of law enforcement agencies. The Commission shall include recommendations for appropriate enforcement mechanisms but may not recommend additional rulemaking authority for the Commission.

TITLE X—MISCELLANEOUS

SEC. 1001. COMMISSIONER PARTICIPATION IN FORUMS AND MEETINGS.

(a) In General.—Section 5 (47 U.S.C. 155) is amended by adding at the end the following:

“(f) Meetings.—

“(1) Attendance required.—Notwithstanding 552b of title 5, United States Code, and
section 4(h) of this Act, the Commission may conduct a meeting that is not open to the public if the meeting is attended by—

“(A) all members of the Commission; or

“(B) at least 1 member of the political party whose members are in the minority.

“(2) VOTING PROHIBITED.—The Commission may not vote or make any final decision on any matter pending before it in a meeting that is not open to the public, unless—

“(A) otherwise authorized by section 552b(b) of title 5, United States Code; or

“(B) the Commission has moved its operations outside Washington, D.C., pursuant to a Continuity of Operations Plan.

“(3) PUBLICATION OF SUMMARY.—If the Commission conducts a meeting that is not open to the public under this section, the Commission shall promptly publish an executive summary describing the matters discussed at that meeting after the meeting ends, except for such matters as the Commission determines may be withheld under section 552b(e) of title 5, United States Code. This paragraph does not apply to a meeting described in paragraph (4).
“(4) **Quorum Unnecessary for Certain Meetings.**—Neither section 552b of title 5, United States Code, nor paragraph (1) of this subsection applies to—

“(A) a meeting of 3 or more members of the Commission with the President, any person employed by the Office of the President, any official of a Federal, State, or local agency, a Member of Congress or his staff;

“(B) the attendance, by 3 or more members of the Commission, at a forum or conference to discuss general communications issues; or

“(C) a meeting of 3 or more members of the Commission when the Continuity of Operations Plan is in effect and the Commission is operating under the terms of that Plan.

“(5) **Savings Clause.**—Nothing in this subsection shall be construed to prohibit the Commission from doing anything authorized by section 552b of title 5, United States Code.”.

**SEC. 1002. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconsti-
tutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.