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S. 2195

To direct the Federal Communications Commission to require the reservation, for public uses, of capacity on telecommunications networks, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15 (legislative day, JUNE 7), 1994

Mr. INOUE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To direct the Federal Communications Commission to require the reservation, for public uses, of capacity on telecommunications networks, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Public Tele-
5 communications Infrastructure Act of 1994”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United States Government has consist-
9 ently encouraged the development and dissemination

1 of public telecommunications services in broadcast
2 and nonbroadcast technologies through, among other
3 things, the Public Broadcasting Act of 1967, the
4 Public Telecommunications Financing Act of 1978,
5 and the Public Telecommunications Act of 1992,
6 wherein Congress found that “it is in the public in-
7 terest for the Federal Government to ensure that all
8 citizens of the United States have access to public
9 telecommunications services through all appropriate
10 available telecommunications distribution tech-
11 nologies. . . ”.

12 (2) The Government has a compelling interest
13 in ensuring that all citizens of the United States
14 have access to noncommercial governmental, edu-
15 cational, informational, cultural, civic, and charitable
16 services through all appropriate telecommunications
17 networks.

18 (3) New telecommunications technologies will
19 enhance the ability of schools, libraries, local govern-
20 ments, public broadcast institutions, and nonprofit
21 organizations to deliver and receive noncommercial
22 governmental, educational, informational, cultural,
23 civic, and charitable services throughout the United
24 States.

1 (4) It is in the public interest that these entities
2 be granted access to capacity on telecommunications
3 networks for the purpose of disseminating and re-
4 ceiving noncommercial governmental, educational,
5 informational, cultural, civic, and charitable services
6 throughout the United States.

7 (5) It is necessary and appropriate that these
8 entities have access, without charge, to the capacity
9 on telecommunications networks to enable the public
10 to have affordable access to the governmental, edu-
11 cational, informational, cultural, civic, and charitable
12 services provided by such entities.

13 (6) Telecommunications services, including
14 cable television programming, basic telephone serv-
15 ice, and telecommunications services not yet avail-
16 able, are likely to become an increasingly pervasive
17 presence in the lives of all Americans.

18 (7) Most Americans are currently served by
19 telecommunications networks that lack sufficiently
20 open architecture, sufficient capacity, and adequate
21 nondiscriminatory access terms necessary to provide
22 open access to a diversity of voice, video, and data
23 communications.

24 (8) Private telecommunications carriers are
25 likely to control access to telecommunications net-

1 works that lack sufficiently open architecture, suffi-
2 cient capacity, and adequate nondiscriminatory ac-
3 cess terms. Without narrowly tailored governmental
4 intervention, the existence of these private “gate-
5 keepers” is likely to restrict access to these net-
6 works.

7 (9) Private telecommunications carriers respond
8 to marketplace forces, and therefore are most likely
9 to exclude those members of the public and institu-
10 tions with the fewest financial resources, including
11 but not limited to small town and rural residents,
12 low income people, minorities, individuals with dis-
13 abilities, the elderly, and noncommercial organiza-
14 tions such as schools, libraries, public broadcasters,
15 and nonprofit community and civic organizations.

16 (10) To facilitate widespread public discourse
17 on a range of public concerns between and among all
18 Americans, the Government has a compelling inter-
19 est in providing broad access to telecommunications
20 networks for a diversity of voices, viewpoints, and
21 cultural perspectives, including access for members
22 of the public whose voices are most likely to be ex-
23 cluded by private telecommunications carriers.

24 (11) Assuring access to a diversity of voices,
25 viewpoints, and cultural perspectives over tele-

1 communications networks benefits all members of
2 the public who use telecommunications networks to
3 disseminate or receive information.

4 (12) Government support and encouragement of
5 a diversity of voices, viewpoints, and cultural per-
6 spectives over telecommunications networks furthers
7 a compelling governmental interest in improving
8 democratic self-governance, and improving and fa-
9 cilitating local government services and communica-
10 tion between citizens and elected and unelected pub-
11 lic officials.

12 (13) Telecommunications networks make sub-
13 stantial use of public rights-of-way in real property
14 and in spectrum frequencies.

15 (14) Because of the Government's compelling
16 interest in ensuring broad and diverse access to tele-
17 communications networks for the purposes of dis-
18 seminating and receiving noncommercial educational
19 and informational services, and in exchange for the
20 use of public rights-of-way accorded telecommuni-
21 cations networks, it is appropriate for Congress
22 (through the assertion of concurrent Federal juris-
23 diction over rights-of-way held or controlled by State
24 or local governments) to require that owners and op-

1 erators of telecommunications networks reserve ca-
2 pacity on such networks for public use.

3 (15) The least restrictive means to ensure that
4 those members of the public whose voices are most
5 likely to be excluded from telecommunications net-
6 works can access those networks is to require those
7 networks to reserve a portion of their capacity for
8 that access.

9 (16) It is in the public interest that reserved
10 network capacity for public use be accompanied by
11 funding to facilitate use of such capacity to provide
12 noncommercial governmental, educational, informa-
13 tional, cultural, civic, and charitable services for the
14 public.

15 **SEC. 3. PUBLIC RIGHTS-OF-WAY.**

16 Title VII of the Communications Act of 1934 (47
17 U.S.C. 601 et seq.) is amended by adding at the end the
18 following new section:

19 **“SEC. 714. PUBLIC RIGHTS-OF-WAY.**

20 “(a) DEFINITIONS.—As used in this section:

21 “(1) The term ‘telecommunications network’
22 means any group of facilities that has been granted
23 the right to occupy any public right-of-way to trans-
24 mit or carry telecommunications for the public, and
25 provides the consumer or end user the opportunity

1 to choose from a range of telecommunications that
2 are available contemporaneously to the public. A ter-
3 restrial radio or television broadcast station licensed
4 pursuant to Title III shall not be considered a tele-
5 communications network by reason of its use of its
6 assigned spectrum.

7 “(2) The term ‘public right-of-way’ means any
8 right-of-way, including use of the electromagnetic
9 spectrum, that is held or otherwise controlled by
10 Federal, State, or local governments on behalf of the
11 public, and is used in the transmission or carriage
12 of telecommunications.

13 “(3) The term ‘telecommunications’ means
14 communications of any form transmitted or carried
15 by any means, including analog or digital electro-
16 magnetic signals.

17 “(b) REQUIREMENT FOR RESERVED CAPACITY.—
18 Within 365 days after the date of enactment of this sec-
19 tion, the Commission shall promulgate regulations to re-
20 quire owners and operators of telecommunications net-
21 works to reserve, for public uses, capacity on such net-
22 works for use free-of-charge by eligible entities. The re-
23 served capacity shall be considered public property subject
24 to disposition pursuant to regulations promulgated by the
25 Commission, and the owner or operator of any affected

1 telecommunications network shall have no control over,
2 and no liability for, the communications content of such
3 capacity.

4 “(c) RESERVATION OF CAPACITY.—

5 “(1) AMOUNT OF CAPACITY TO BE RE-
6 SERVED.—The Commission shall presume that a
7 reservation under this section of 20 percent of the
8 capacity of a telecommunications network is appro-
9 priate, but may require a reservation of a lower
10 amount or an amount to be phased-in not exceeding
11 20 percent, upon consideration of the type of tech-
12 nology used by the network, barriers to accessing the
13 network, and such other factors as the Commission
14 considers appropriate. Telecommunications networks
15 shall not be required to reserve public capacity in ex-
16 cess of that required under this paragraph.

17 “(2) TEMPORARY REDUCTIONS.—If the Com-
18 mission determines that any portion of the amount
19 of public capacity that a telecommunications net-
20 work is required to reserve under this section will go
21 unused, the Commission may temporarily reduce the
22 reserved amount by such unused portion. During the
23 period when the reserved public capacity of a tele-
24 communications network is temporarily reduced, an
25 eligible entity described in subsection (d) may re-

1 request use of any of the portion by which such re-
2 served capacity was reduced and the Commission
3 shall, within 30 days after the request, provide suffi-
4 cient capacity to meet the request.

5 “(3) QUALITY.—The quality of telecommuni-
6 cations capacity reserved for public uses under this
7 section shall be equivalent to the best quality of
8 available capacity of the affected telecommunications
9 network in all respects, including accessibility, chan-
10 nel positioning, interconnection access rights, net-
11 work capabilities, and such other factors as the
12 Commission considers appropriate.

13 “(4) REDUCTION OR ELIMINATION OF OBLIGA-
14 TIONS.—The Commission may reduce or eliminate
15 obligations upon a telecommunications network im-
16 posed under this subsection, if the Commission de-
17 termines on the record after notice and opportunity
18 for comment, that, throughout its entire service
19 area, such network has clearly sufficient open archi-
20 tecture, capacity, and nondiscriminatory access
21 terms to ensure that economic and technological bar-
22 riers to access by eligible entities describe in sub-
23 section (d) are eliminated.

24 “(5) EFFECT ON FRANCHISE FEE COLLEC-
25 TION.—Nothing in this section is intended to affect

1 the power of any franchising authority to collect a
2 franchise fee authorized under section 622.

3 “(d) ALLOCATION OF CAPACITY.—

4 “(1) ELIGIBLE ENTITIES.—The following enti-
5 ties are the entities eligible for access to the public
6 capacity reserved under this section:

7 “(A) State, local, and tribal governments
8 and their agencies.

9 “(B) Accredited educational institutions
10 open to enrollment by the public.

11 “(C) Public telecommunications entities.

12 “(D) Public and nonprofit libraries.

13 “(E) Nonprofit organizations described
14 under section 501(c)(3) of the Internal Revenue
15 Code of 1986 that are formed for the purpose
16 of providing nondiscriminatory public access to
17 noncommercial educational, informational, cul-
18 tural, civic, or charitable services.

19 “(2) TERMS AND CONDITIONS OF ACCESS.—

20 Such eligible entities shall have access to such public
21 capacity at no charge (for installation or service) if
22 using such capacity only for the provision of edu-
23 cational, informational, cultural, civic, or charitable
24 services directly to the public without charge for
25 such services. Telecommunications capacity allocated

1 pursuant to this section shall not be sold, resold, or
2 otherwise transferred in consideration for money or
3 any other thing of value.

4 “(3) ALLOCATION.—The Commission shall de-
5 termine appropriate mechanisms and guidelines for
6 allocating such public capacity. In so doing, the
7 Commission shall establish block allocations to
8 State, local, or tribal governments for redistribution
9 among eligible entities pursuant to telecommuni-
10 cations plans submitted by State, local, or tribal gov-
11 ernments, and ensure that the intent of Congress, as
12 expressed in section 396(a), is served.

13 “(4) TRANSITION.—The Commission, as tele-
14 communications network capacity expands, shall pro-
15 vide for a transition within a reasonable period of
16 time from requirements under sections 335, 611,
17 and 615 to requirements under this section.

18 “(e) PUBLIC TELECOMMUNICATIONS INFRASTRUC-
19 TURE FUND.—

20 “(1) ESTABLISHMENT.—Within 365 days after
21 the date of enactment of this section, the Commis-
22 sion shall promulgate regulations to establish a Pub-
23 lic Telecommunications Infrastructure Fund to pro-
24 vide eligible entities described in subsection (d) with
25 economic support to use the capacity reserved on

1 telecommunications networks under this section to
2 provide noncommercial governmental, educational,
3 informational, cultural, civil, and charitable services
4 for the public. Such regulations shall provide a
5 mechanism for financing the Public Telecommuni-
6 cations Infrastructure Fund by means of—

7 “(A) contributions, on a competitively neu-
8 tral basis, by owners and operators of tele-
9 communications networks (including those regu-
10 lated under titles II, III and VI, except that
11 nothing in this subsection may be construed as
12 affecting the power of any franchising authority
13 to collect a franchise fee authorized under sec-
14 tion 622);

15 “(B) contributions from a designated por-
16 tion of any universal service fund, as may be es-
17 tablished under this Act;

18 “(C) contributions from such other sources
19 as the Commission may determine to be suffi-
20 cient and appropriate for such purposes; or

21 “(D) any combination of the contributions
22 described in subparagraphs (A), (B), and (C).

23 “(2) CONTENT OF REGULATIONS.—The regula-
24 tions promulgated under this subsection shall—

1 “(A) provide that contributions to the Pub-
2 lic Telecommunications Infrastructure Fund
3 shall begin no later than 365 days after pro-
4 mulgation of the regulations;

5 “(B) determine appropriate mechanisms
6 and guidelines for allocating the funds collected
7 pursuant to this subsection to such State, local,
8 or tribal governments as the Commission con-
9 siders appropriate;

10 “(C) establish guidelines for the distribu-
11 tion of such funds by State, local, or tribal gov-
12 ernments to provide eligible entities described in
13 subsection (d) with sufficient economic support
14 to use the network capacity reserved under this
15 section to provide noncommercial governmental,
16 educational, informational, cultural, civic, and
17 charitable services for the public; and

18 “(D) require that each State, local, or trib-
19 al government authorized to distribute funds
20 pursuant to subparagraph (C) establish a public
21 advisory commission that—

22 “(i) shall be composed of members
23 representing the interests of eligible enti-
24 ties described in subsection (d); and

1 “(ii) shall ensure that the funds are
2 distributed to a broad cross section of eli-
3 gible entities in accordance with the guide-
4 lines established pursuant to subparagraph
5 (C).”.

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